## 1NC Shells

### 1NC – XO CP

#### The Executive Branch of the United States federal government should:

<<<<their plan>>>

#### Executive orders can effectively shape ocean policy—empirics prove

Howe, 11 (Angela T. Howe \*, \* Managing Attorney, Surfrider Foundation, Ocean and Coastal Law Journal, 2011, 17 Ocean & Coastal L.J. 65, “ARTICLE: THE U.S. NATIONAL OCEAN POLICY: ONE SMALL STEP FOR NATIONAL WATERS, BUT WILL IT BE THE GIANT LEAP NEEDED FOR OUR BLUE PLANET?” Lexis, jj)

On July 19, 2010, President Obama announced his commitment to implementing the first National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes. n95 This decision came on the heels of the June 17, 2009 Presidential Memorandum addressing the need for a unifying national ocean policy to guide future decisions affecting our oceans, n96 which followed decades of policy making and governance assessments for how to manage the nation's valuable maritime assets. n97 Thus, the NOP was born. The Obama administration's directive called for federal agencies to adopt and implement the Final Recommendations of the White House Interagency Ocean Policy Task Force, n98 a body established by President Obama in June 2009 to make such recommendations on U.S. ocean policy. n99 The Task Force recommendations called for the establishment of a NOP with a strong federal coordinating structure and an effective framework for implementation based on coastal and marine spatial planning, all to be overseen by a National Ocean Council. n100 To achieve this NOP, the Obama administration established this new National Ocean Council and charged them with identifying near-term, mid-term, and long-term actions with appropriate milestones, goals, and performance measures. n101 Not only had the 2009 Task Force urged a NOP, but it was also a recurring recommendation from reports by the USCOP and the Pew [\*79] Oceans Commission, which was then championed by JOCI. n102 The NOP "is part of an ongoing evolution in thought regarding how best to manage fragile marine resources." n103 In its 2010 executive order, the Obama administration also mandated that all federal agencies: implement the NOP, the stewardship principles, and the national priority objectives; participate in the coastal and marine spatial planning process; and comply with certified coastal and marine spatial plans. n104 Nine strategic action plans were also developed to support implementation of the national priority objectives, including (1) Ecosystem-Based Management; (2) Coastal and Marine Spatial Planning; (3) Inform Decisions and Improve Understanding; (4) Coordinate and Support; (5) Resiliency and Adaption to Climate Change and Ocean Acidification; (6) Regional Ecosystem Protection and Restoration; (7) Water Quality and Sustainable Practices on Land; (8) Changing Conditions in the Arctic; (9) Ocean, Coastal and Great Lakes Observations, Mapping and Infrastructure. n105 The executive order makes clear that the aim of the NOP is to "achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations," through these various objectives. n106 The National Ocean Council engaged with local communities throughout the summer of 2011 to develop strategic action plans to achieve the nine national priority objectives that address some of the most pressing challenges facing these areas. n107 [\*80] The NOP was passed via an executive order of the President of the United States. n108 An executive order is a directive issued by the President, which has the force of law and requires no action by the legislature or judiciary. n109 Executive Order 13,547 declared that it is now national policy to "protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources." n110 For the NOP, the intent of the administration and leaders of the policy is that it will be followed by an act of Congress to show support for effective implementation of the NOP, including the establishment of an ocean investment fund, n111 especially because history demonstrates that the most successful executive orders are those that were subsequently codified to some extent by congressional action. n112 However, given the current congressional atmosphere and unrelated pressures on our federal legislature, it may not come soon. Interestingly, there have been other executive orders issued regarding the management of ocean resources. For example, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve was first established by an act of President Bill Clinton in 2000 through Executive Order 13,178. n113 President George W. Bush later designated that reserve as a national monument by proclamation on June 15, 2006, n114 under the 1906 Antiquities Act. n115 The Antiquities Act provides for an even more streamlined process of protection than a sanctuary designation. n116 Consequently, using the Antiquities Act bypassed a year of consultations and the need for an environmental impact statement for the proposed Northwestern Hawaiian Islands National Marine Sanctuary (NWHI) by [\*81] making this area a national monument. n117 The legislated process for stakeholder involvement in the planning and management of a marine protected area had already taken five years of effort, but the abrupt establishment of the NWHI as a national monument, rather than a sanctuary, provided immediate and more resilient protection, revocable only by an act of Congress. n118 The area, now known as Papahanaumokuakea Marine National Monument, allowed for significant protection of the marine environment. n119 The area accounts for approximately half of the locally landed bottomfish in Hawaii, and these fish are highly valued by local chefs and consumers. n120

#### Executive orders avoid the politics DA—especially on contentious environmental issues like ocean policy

Migliaccio, 14 (Emily Migliaccio, Ocean Intern, Boston College, Spring, 2014, Vermont Journal of Environmental Law, 15 Vt. J. Envtl. L. 629, “NOTE: THE NATIONAL OCEAN POLICY: CAN IT REDUCE MARINE POLLUTION AND STREAMLINE OUR OCEAN BUREAUCRACY?” Lexis, jj)

***\*NOP = National Ocean Policy***

The Obama Administration issued Executive Order 13,547, intending for Congress to "show support for effective implementation of the NOP, including the establishment of an ocean investment fund"--the hope being that Congress would codify the Order in subsequent legislation. n130 At present, Congress is wrestling with some bills relating to the NOP; however, not all proposals support the policy. For example, the House has adopted an amendment to the Water Resources and Development Act ("WRDA") n131 that would bar the Obama Administration from implementing marine spatial planning under the WRDA, specifically "preventing the Army Corps of Engineers and other entities that receive money from the bill from implementing such planning as part of the National Ocean Policy." n132 Then again, also before Congress is a bill that seeks to establish a National Endowment for the Oceans, which would fund programs and activities to "restore, protect, maintain, or understand living marine resources and their habitats and ocean, coastal, and Great Lakes resources. . . ." n133 For this bill to pass, House and Senate members must agree to prioritize ocean conservation and research, and allocate funds to [\*647] the initiative. Although the NOP is appearing on the Congressional docket, it is hard to find hope for successful ocean reform in the current congressional atmosphere.

In the face of Congressional gridlock, executive orders may be necessary, particularly to advancing pro-environmental policies. As legal scholar Sandra Zellmer argues, "[t]he bitterly partisan nature of environmental issues in Congress today suggests that comprehensive, thoughtful reforms tailored to the problems faced by modern society are unlikely." n134 Further, Zellmer points out that even "if today's Congress were to take up the call to reform existing statutes, it may be more likely to dismantle provisions disliked by powerful, regulated entities than to pass comprehensive, forward-thinking legislation designed to solve contemporary environmental problems." n135 Thus, with an essentially incompetent Congress, Zellmer proposes that non-legislative action, such as issuing an executive order, may "offer an opportunity to work around the congressional logjam and move the environmental ball forward." n136

### 1NC – Pres Powers NB

#### Executive orders control policy and set agendas – key to presidential power

Mayer, ’01 [Kenneth, Professor in the Department of Poli Sci @ University of Wisconsin-Madison, *Executive Orders and Presidential Power*, pg. 28-29]

This theoretical perspective offered by the new institutional economics literature provides a way of making sense of the wide range of executive orders issued over the years, and is the centerpiece of my approach. The common theme I find in significant executive orders is control; executive orders are an instrument of executive power that presidents have used to control policy, establish and maintain institutions, shape agendas, manage constituent relationships, and keep control of their political fate generally. Within the boundaries set by statute of the Constitution, presidents have consistently used their executive power – often manifested in executive orders – to shape the institutional and political context in which they sit. There are, to be sure, limits on what presidents can do relying solely on executive orders and executive power, and presidents who push too far will find that Congress and the courts will push back. Yet the president retains significant legal, institutional, and political advantages that make executive authority a more powerful tool than scholars have thus far recognized. This emphasis on control allows for a longer-term view than that generally taken by informal approaches to presidential leadership. I conclude that presidents have used executive orders to alter the institutional and political context in which they operate. The effects of any one effort in this regard may not be immediately apparent, and in many cases presidents succeed only after following up on what their predecessors have done. In this respect I view presidential leadership as both strategic and dynamic, a perspective that brings into sharper relief the utility of executive power to the presidency. I also differ with Neustadt on this score, as he looks at how presidents can be tactically effective within a particular structure context over which they have no control.

#### That solves nuke war --- now is key for Obama to show leadership

Coes, 9-30-11 (Ben, former speechwriter in the George H.W. Bush administration, managed Mitt Romney’s successful campaign for Massachusetts Governor in 2002 & author, “The disease of a weak president”, The Daily Caller, http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/)

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician losing the trust and respect of friends and foes alike. In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces. But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one. Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over. Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device. Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world. In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple. The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, we must be ready and willing to threaten our military might on behalf of our allies. And our allies are Israel and India. There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. The single greatest threat facing America and our allies is a weak U.S. president. It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

## General Solvency Extensions

### XO’s Solve Oceans

#### Executive orders solve ocean policy—congressional action not key

Sanchirico & Hanna, 5 (James Sanchirico is a fellow at Resources for the Future, a Washington, D.C., think tank, and Susan Hanna is a professor of marine economics at Oregon State University. December 26, 2005, Resources for the Future, “Taking Stock of U.S. Fisheries Policy” <http://www.rff.org/focus_areas/features/Pages/Taking-stock-of-US-Fisheries-Policy.aspx>, jj)

These are but three needed changes in U.S. ocean policy. However, none of these solutions requires legislative action or major institutional reorganization; they can be achieved solely through presidential leadership. Addressing these immediate needs will provide the building blocks necessary for greater change. They must be met first to restrain the race for fish and to stop the damage to the industry and the environment. Only then can longer-term, fundamental changes be implemented, and indeed succeed.

#### XO’s create a strong policy foundation for ocean exploration & development

Chambers, 10 (Jim Chambers is the founder and owner of Prime Seafood, serving many of Washington's top restaurants, a retired fisheries biologist, he was an official with the National Marine Fisheries Service for 20 years and the Army Corps of Engineers for eight years, The Baltimore Sun, 4/13/10, “National ocean policy needed” <http://articles.baltimoresun.com/2010-04-13/news/bs-ed-national-ocean-policy-20100413_1_national-ocean-policy-chesapeake-bay-nation-s-largest-estuary>, jj)

Now is the time to act. The longer we wait, the more difficult and expensive it will be to protect and restore our coastal waters and the economies and communities they support. We need the Obama administration to deliver a strong national policy for the Chesapeake Bay through an executive order centered on protection and sustainable use of our nation's coastal and ocean resources.

#### XO provides critical foundation to solve US ocean policy

Turnipseed et al, 2009 (Mary turpinseed, Larry B. Crowder, Raphael D. Sagarin, Stephen E. Roady, Duke university) <http://nicholasinstitute.duke.edu/sites/default/files/publications/legal-bedrock-for-rebuilding-americas-ocean-ecosystems-paper.pdf> LO

With new leadership in place in washington, U.S. ocean policy is poised for a long overdue transformation. Since two national ocean commissions highlighted the need for dramatic reform 5 years ago, progress has been made toward understanding how to rebuild ecosystems. But implementing a new, ecosystem-based policy regime for federal ocean waters will require a solid legal foundation that provides the authority for, and imposes responsibility upon, disparate federal agencies to collaborate in their management of ocean resources. A public trust doctrine would provide this critical foundation.

A federal public trust doctrine for U.S. ocean waters could be established in a number of ways. Executive Order: The president could make expanding the doctrine a signature of his administration through an executive order that directs all federal ocean agencies to apply their resources toward cooperatively and sustainably managing the ocean public trust

Obama will use executive orders to implement ocean policy he has before

National Ocean Council 2012

<http://www.whitehouse.gov/administration/eop/oceans/implementationplan>

KS

On June 12, 2009, President Obama sent a [memorandum](http://www.whitehouse.gov/sites/default/files/page/files/2009ocean_mem_rel.pdf) to the heads of executive departments and Federal agencies establishing an Interagency Ocean Policy Task Force and charged it with developing recommendations to enhance national stewardship of the ocean, coasts, and Great Lakes. The Task Force released interim reports for public comment in September 2009 and December 2009, and received and reviewed close to 5,000 written comments from Congress, stakeholders, and the public before finalizing its recommendations. President Obama signed an [Executive Order](http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf) on July 19, 2010 adopting the Final Recommendations and establishing a National Policy for the Stewardship of the Ocean, Coasts, and Great Lakes.

Obama is focusing on ocean policy he will issue executive orders soon

Los Angeles Time 6/17/14

<http://www.latimes.com/nation/la-na-oceans-20140617-story.html>

KS

President Obama announced a series of measures Tuesday to protect parts of the world’s oceans, including the creation of a marine sanctuary that would close a large swath of the central Pacific to fishing and energy development. The plan would require federal agencies to take multiple initiatives to address pollution, overfishing and acidification of ocean water, which is driven by climate change.

#### Obama’s focus is now is on oceans, the time to implement the plan is now

Jonothan Ernst, Reuters 6/18/14

<http://in.reuters.com/article/2014/06/17/us-usa-obama-oceans-idINKBN0ES19I20140617>

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(Reuters) - The White House on Tuesday unveiled efforts to expand protection of vast areas of the Pacific Ocean controlled by the United States from over fishing and environmental damage.

President Barack Obama's proposal, to go into effect later this year, would create a vast marine sanctuary and is part of an effort to safeguard more ocean territory, which is under threat from several factors, including overfishing and climate change, the White House said.

**Executive Orders Effective in Ocean Policy Making**

Herzog 13

Megan Herzog, Researcher and Teacher at Emmett Institute on Climate Change, “Obama Administration Releases National Ocean Policy Implementation Plan” <http://legal-planet.org/2013/04/17/obama-administration-releases-national-ocean-policy-implementation-plan/>

But first, a quick rewind for readers who are not familiar with the history of the National Ocean Policy.  President Obama established the [National Ocean Policy](http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf) via Executive Order 13,547 on July 19, 2010.  In essence, the National Ocean Policy endeavors to manage conflicts between a growing number of ocean users (shippers, fishermen, military, renewable energy developers, etc.) while maintaining and enhancing the environmental health of ocean and coastal ecosystems. The Executive Order created the 27-agency representative [National Ocean Council](http://www.whitehouse.gov/administration/eop/oceans) to share information and streamline federal decision making under the 140 federal laws affecting coastal, ocean, and Great Lakes resources.  These laws and related programs have been enacted in piecemeal fashion over the course of many decades, resulting in a fragmented and inefficient ocean management regime.  The Council is charged with developing cohesive action plans for [nine priority ocean objectives](http://www.whitehouse.gov/administration/eop/oceans/sap), which address regulatory priorities like ecosystem-based management, coastal and marine spatial planning, the Arctic, and climate change adaptation. Environmental groups, federal agency representatives, many federal and state lawmakers, and other ocean users around the country applauded the National Ocean Policy.

#### Obama is will to use XO

MIRANDA GREEN, JUN 17, 2014

<http://www.thedenverchannel.com/decodedc/obama-continues-use-of-executive-orders-with-latest-marine-water-protection-proposal>

WASHINGTON, D.C. - President Obama announced a new executive order to expand protected marine waters Tuesday, making it the second executive order this week. Following Monday's announcement that the White House is making it illegal for government contractors to discriminate based on sexual preference, Obama introduced Tuesday a proposal that could create the largest sanctuary for marine life in the world and double the area of ocean that is protected globally. Under the proposal, a large expanse of the central Pacific Ocean will become a protected national monument and off limits to fishing. According to two analyses obtained by the Washington Post, The Pacific Remote Islands Marine National Monument would be expanded from 87,000 square miles to about 782,000 square miles. If all goes according to plan, the proposal will go into effect later this year. This most recent order, filed without the help or advice of Congress, is further proof that the President is following through on the promises he made in this year’s State of the Union Address. Obama vowed that he would step-up his use of executive authority in his remaining two years as president and that he would no longer wait for Congress to move ahead on his agenda. Tuesday's announcement is Obama’s first executive order that places protections on marine waters. It will be added to the list of 11 other executive orders he enacted since his presidency began that protect areas of land. On Monday, the president issued an order requiring all companies who contract with the federal government to not discriminate on the basis of sexual orientation and gender identity. In addition, Obama has also signed separate executive orders creating new overtime protections for many salaried workers and requiring federal contractors to pay their employees a minimum wage of $10.10 an hour, up from $7.25 an hour, on new contracts starting in 2015. But not everyone is happy with Obama’s new policy push. His more pronounced use of executive authority is to the chagrin of many Republican members who believe circumventing their institution is borderline unconstitutional. In an interview with the Post, House Natural Resources Committee Chairman Doc Hastings, R-Wash, called Obama’s actions “another example of this imperial presidency.” But Obama isn’t the first president to utilize executive orders to implement policy. In fact his numbers aren’t even close to the highest. Executive orders are common, regardless of the president's party, and almost every president has used them.

### XO’s Lead to Congressional Follow-on

#### Counterplan causes congressional follow-on --- solves the whole aff but avoids politics

Duncan 10, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

**Executive orders** can serve the purpose of allowing the President to generate favorable publicity, such as when President Clinton signed an executive order on ethics, n493 and when President George W. Bush signed the first of a series of executive orders to launch his Faith-Based and Community Initiatives. n494 While these orders pay off political debts and thus may seem trivial, they nevertheless **create both** infrastructural and regulatory precedents for future administrations. Hence, they create an avenue for key constituencies of each administration to influence the executive structure as a whole without necessarily permitting that influence to extend to arenas of reserved for Congress. That is, while the President can act more swiftly and precisely to satisfy political commitments, the impact of his action will fall considerably short of analogous congressional action. This in turn serves to satisfy selected constituencies without giving them undue power via the presidency.

Executive orders have even served to create presidential commissions to investigate and research problems, and have been instrumental in solving remedial issues. n495 **Commission reports** that result from such orders can in [\*398] turn put pressure on Congress to enact legislation to respond to those problems. President Franklin Roosevelt pursued this process when he issued a report of the Committee on Economic Security studying financial insecurity due to "unemployment, old age, disability, and health." n496 This report led to the Social Security Act. n497

#### XO’s solve and lead to congressional follow-on—politics is a net benefit

Axe, 12 (David Axe is an American military correspondent who writes on military life and aspects of current conflicts, October 15, 2012, The Center for Public Integrity, “Obama order protects intelligence community whistleblowers” http://www.publicintegrity.org/2012/10/15/11473/obama-order-protects-intelligence-community-whistleblowers, jj)

President Barack Obama signed an executive order last week creating new protections for national security and intelligence community whistleblowers, effectively sidestepping a congressional impasse provoked by the reservations of congressional Republicans. The order — formally known as "Presidential Policy Directive 19" and signed by Obama out of public view on Oct. 10 and without a White House announcement — directs intelligence agencies to establish procedures for the protection of employees reporting waste, fraud and abuse. The order is meant to address longstanding concerns that whistleblowers in the intelligence agencies lacked legal protections like those available to employees of the Department of Defense and other federal agencies. The new order bans retaliation against whistleblowers in the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency and other intelligence organizations. Until now, these agencies were not specifically prohibited from retaliating against whistleblowers. A House bill aimed at improving protections for most federal employees, known as the Whistleblower Protection Enhancement Act and passed by that chamber in September, lacked the safeguards ordered by Obama. Angela Canterbury, from the Washington, D.C. watchdog group Project on Government Oversight, said House Republicans had narrowed the bill’s focus due to worries that its provisions might encourage Wikileaks-type disclosures of sensitive information. She called this a "red herring," explaining that by protecting those with security clearances who want to blow the whistle on wrongdoing at intelligence agencies, a new law could have encouraged them to “use safe internal channels.” The Senate has yet to take up its own version of the bill. In the meantime, Obama’s order "fills a vacuum," according to Tom Devine, a legal adviser to the Government Accountability Project, a Washington, D.C. nonprofit that provides legal support for government whistleblowers, including many working on national security matters. The order could function as a "beachhead" for further reforms in future legislation, he says.

#### CP causes Congressional follow-on but avoids politics

Brecher 12 (Aaron, JD Candidate, University of Michigan Law, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations,” October, <http://www.michiganlawreview.org/assets/pdfs/111/3/Brecher.pdf>)

Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators. This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the best way forward is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why a president might willingly constrain her discretion by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks’ misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars—enacting legislation—because of the practical difficulties of passing new legislation. The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion.145 Apparently, an Office of Legal Counsel (“OLC”) memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated.146 Establishing a presumptive answer would go far toward resolving this dispute. Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack.147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law.148 A practice of complying with the covert action regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive’s choice to use military authorities in appropriate circumstances. The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention.149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation.150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

### XO’s Solve – Signal / Credibility / Modeling

#### Presidential commitments are credible

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

#### The president solves modeling, signal, and international perception --- Obama weighing in on the merits of a policy outweighs the process in which it is passed

Singer 5-23-’13, Peter W. Singer, Director, Center for 21st Century Security and Intelligence, Brookings Institution, Finally, Obama Breaks His Silence on Drones, <http://www.brookings.edu/research/opinions/2013/05/23-drones-obama-singer>, jj

As this played out, the president's absence from the debate became more and more telling. Yes, there were a couple of speeches by presidential aides finally acknowledging the use of such technology, quick mentions on late-night talk shows and even presidential jokes about drone strikes. But the administration's case in the public debate remained disjointed, tentative and, as the controversy surrounding John Brennan's confirmation hearings as CIA director illustrated, far from strategic or satisfactory. The time was long overdue for the true stamp of presidential voice and authority on the topic to be heard.¶ That is what makes the president's speech Thursday at National Defense University so important, and simultaneously so challenging for him. He has to try to strike a balance between arguing that terrorism threats will remain with us for the long term, as recent events in Boston and London would illustrate, but that the structures we gradually built up in response, from the prison at Guantanamo Bay, Cuba, to the drone campaign, cannot remain with us in their ad hoc manner for the long term.¶ Beyond all the internal policy questions — such as what the CIA should control versus what the Pentagon controls — he has a broader task. He must lay out the overdue case for regularizing, so to speak, our counter-terrorism strategy itself, from the means to the ends. This will require touching on thorny issues such as how to bring more transparency to the ugly task of a targeted killings campaign, how to create more interaction with Congress — which both wants and avoids oversight — and, finally, how to find a path out of the Gitmo conundrum.¶ Beginning this kind of discussion has been described by some as just a way to change the topic in the midst of other would-be scandals dominating the news cycle. But let's be crystal clear: The president is making a big bet by speaking out on issues on which he still enjoys fairly broad public support.¶ The reason to take this bet is that the speech offers enormous advantages over the alternative of remaining silent. Though it may or may not assuage the genuine concerns at home about the drone campaign, the very act is hugely important inside government. Only the president can operate above the interagency disputes, and his vision will set the terms of internal policy development across multiple agencies (why those staff speeches and confirmation hearings never could substitute for his voice).¶ In turn, the public side of the speech matters in a manner beyond any blip in domestic poll numbers. Here again, only the president can truly stake out America's vision in a way the world notices. If well played, the speech might even be the foundation for future international norms that need to be set in the post-9/11, post-Osama bin Laden world. This is all the more important as our technologies proliferate and other nations, such as Russia, China and Iran, may seek to follow (or misuse) our precedents in drone strikes and targeted killings.¶ The issues at play are not just about which agency gets to do what and when to tell whom on Capitol Hill, but also how the United States might build a global coalition of the like-minded on the future of counter-terrorism.¶ In short, sometimes a speech is more than just a speech. By finally speaking out on some of the key issues that have grown to define his place in foreign policy history, Obama has his chance, finally, to set the terms of the debate and steer it toward more positive ends.

#### President more perceived than Congress or Courts

Marshall, 8 --- Professor of Law at the University of North Carolina

(April 2008, William P., Boston University Law Review, “THE ROLE OF THE PRESIDENT IN THE TWENTY-FIRST CENTURY: ARTICLE: ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS,” 88 B.U.L. Rev. 505))

7. The Media and the Presidency

As Justice Jackson recognized in Youngstown, the power of the Presidency has also been magnified by the nature of media coverage. This coverage, which focuses on the President as the center of national power, n66 has only increased since Jackson's day as the dominance of television has increasingly identified the image of the nation with the image of the particular President holding office. n67 The effects of this image are substantial. Because the President is seen as speaking for the nation, the Presidency is imbued with a unique credibility. The President thereby holds an immediate and substantial advantage in any political confrontation. n68 Additionally, unlike the Congress or the Court, the President is uniquely able to demand the attention of the media and, in that way, can influence the Nation's political agenda to an extent that no other individual, or institution, can even approximate.

***The president is the focal point of American politics – everyone perceives executive action***

**Fitts 96** [Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis]

Not surprisingly, these diverse factual conclusions often mirror contrasting normative positions on the value of a strong president. On one side, proponents of a strong president argue that a government more directly controlled by a single decisionmaker - that is, a strong unitary executive - frequently avoids many of the collective action problems endemic to legislative bodies or dispersed government organizations, such as Congress or a plural executive. Borrowing from public choice theory, these proponents conclude that the exercise of power by **a** centralized but **politically visible** and [\*830]  electorally accountable **institution, such as the president,** often **serves as the most effective** and democratic **form of government**. In a sense, it is a better form of "enterprise liability." Critics of presidential power, on the other side, emphasize the failures of recent presidents: their lack of accountability to many important political constituencies (both majoritarian and minoritarian); their inability to exercise effective leadership; and their apparent lack of competence, let alone expertise. [**4**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n4) The succession of scandals surrounding each of the last three presidents reinforces this view. Proponents of this position ask why more power should be placed in such a discredited and potentially tyrannical institution. Despite these different assessments of the president's appropriate role, most contributors to this debate seem to agree implicitly on one thing: vesting enhanced authority in the person of the president has increased his influence in the past and will continue to do so if additional centralizing changes are implemented. **[5](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n5" \t "_self)** This view is especially prevalent among legal academics, who generally assume that giving greater formal legal control to the president through devices such as a line-item veto or executive order 12,291, **[6](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n6" \t "_self)**  [\*831]  will necessarily increase his ability to work his will over the bureaucracy, and the government in general. **[7](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n7" \t "_self)** Formal legal power, in other words, will ultimately translate into real policy influence. Similarly, political science scholars who study the strategic implications of political organization suggest that the political singularity of **the presidential persona is a source of immense** informal **political strength**. By applying insights derived from game theory, these commentators delineate the president's strategic advantages in overseeing the modern state, chiefly his influence on the public agenda, ability to establish "focal points" for political bargaining, and freedom from the costs of collective decisionmaking and action. **[8](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n8" \t "_self)** Indeed, even critics of a strong presidency recognize this [\*832]  centralization as an important - albeit unwelcome - source of the president's power. **[9](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n9" \t "_self)**  [\*833] As a result, the debates over whether the president is strong or weak, and whether his power should be increased or limited, have focused invariably on legal, structural, and political changes that would either vest or reduce personal presidential authority. On the one side, those who argue that the president is too strong tend to support expanded congressional oversight of the White House, limited use of the presidential veto, increased autonomy of the executive branch bureaucracy, and increased access for Congress and the press to government documents and deliberations under the Freedom of Information Act (FOIA), **[10](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n10" \t "_self)** Government in the Sunshine Act (GSA), **[11](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n11" \t "_self)** and Federal Advisory Committee Act (FACA). **[12](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n12" \t "_self)** On the other side, those who perceive the president as too weak usually call for a more "unitary executive." These proponents tend to support the enactment of a law authorizing a [\*834]  line-item veto, expansion of presidential supervisory powers over the bureaucracy through executive orders such as 12,291, **[13](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n13" \t "_self)** 12,498, **[14](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n14" \t "_self)** and 12,866, **[15](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n15" \t "_self)** elimination of the independence of independent agencies, expansion of the executive privilege doctrine, and greater insulation of the president from public scrutiny under FOIA and FACA. **[16](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n16" \t "_self)** As the breadth of this list indicates, resolution of most legal issues regarding the powers of the presidency turns on whether one views the president as either too strong or too weak. **[17](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n17" \t "_self)** Both sides seem to agree, however, that increasing the centralization of power in the person of the president, both legally and politically, will significantly increase his influence. **[18](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n18" \t "_self)**  [\*835] This Article takes issue with some important elements of this analysis. I argue that the structural changes that appear to enhance the power of the president under public choice approaches and unitary executive principles can, at the same time, actually undermine the president's reputation, his ability to resolve conflicts, and ultimately, his political strength. As a result, formal attempts to strengthen the presidency may have "diminishing marginal returns" and perhaps even negative effects, at least in some contexts. The reasons are complicated but straightforward: **the** individuality, centrality, and **visibility of the "personal unitary presidency,"** which **is** seen as **an advantage in terms of** collective choice and **public debate**, can be a disadvantage when it comes to conflict resolution and public assessment. By using the term "mediating conflict," I refer to the way in which a political leader or institution overcomes the social and political costs of resolving distributional and symbolicdisputes. [**19**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n19) **Due to** his **singularity and enhanced visibility,**  [\*836]  **a unitary**, centralized **president may be** less able to mediate many of these conflicts. At the same time, he may be politically evaluated more often under personal (rather than institutional) criteria and **subjected to an** **overassessment of government responsibility** and error. This combination of effects can undermine not only the popularity and perceived competence - what I will call "legitimacy" - of the person who holds the office, but indirectly, the president's political influence as well. What the institution of the presidencyseems to gain in strategic power from its centralization in asingle visible individual, it may lose, at least in some contexts, asaresult of the normative political standards applied to individuals. This analysis is intended to explain a paradox in the current debate. Many commentators suggest that the presidency has become more centralized both legally and politically in recent years, as the president and his bureaucratic alter ego, the Executive Office of the President, have become more involved formally and informally in public policy decisions. [**20**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n20) At the same time, some commentators, led by Theodore Lowi, have persuasively detailed the political weaknesses and perceived inadequacies of modern presidents. [**21**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n21) How can these observations be reconciled? [**22**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n22) Extending Lowi's analysis, I argue that while the presidency may have become a more complex and effective institution bureaucratically and legally, in many ways it has also become more individualized politically, which can undermine its political legitimacy and strength. The legal theory of the unitary executive, for which I have some sympathy, can thus be at war with itself.  [\*837] What are the implications of this analysis? First, legal scholars should appreciate the theoretical complexity of the problem. The debate over whether the president is too strong or too weak is insome cases a false dichotomy because the various legal and political changes serving to centralize formal and informal presidential resources may increase presidential influence in some contexts and diminish it in others. [**23**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n23) Indeed, although a more central, unitary president may be stronger overall, he may nevertheless be perceived as less competent. In this sense, one important goal ofthis Article is to explore how the source of at least some of our frustration with the office of the presidency is the result of the structure of the position, rather than the personal "mistakes" of its inhabitants. The second purpose of this Article, though far more speculative, is policy oriented: to suggest possible legal reforms and tactical approaches modern presidents could follow. Can structural mechanisms or approaches be developed that help the chief executive, when appropriate, mediate conflict and avoid certain types of individualized scrutiny? In the past, old-style political parties often filled this role, [**24**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n24) but we are unlikely to return to that era. [**25**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n25) In the alternative, I offer several legal, structural, and political changes that might improve the president's ability to mediate conflict, including (paradoxically) reassessment of the line-item veto, selected cutbacks in direct presidential oversight of agencies, and the judicious creation of commissions, such as the Commission on Base Realignment and Closure, [**26**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n26) which operate [\*838]  with less direct presidential control. Part I describes the different ways in which the modern presidency has become more centralized legally and politically, making the office more visible and politically accountable. Under the analyses developed separately in the legal literature on the unitary presidency and in the political science literature on a centralized "modern" or "plebiscitary" presidency, these developments would seem to make the presidency a more effective and democratic institution. These writings, while focusing on different substantive areas, share common theoretical perspectives on the value of increasing centralized presidential power. Despite these structural developments, the modern presidency does not seem to be a particularly strong institution. Parts II through V offer several possible theoretical explanations, exploring, from a general perspective, the different ways in which the president's visibility and centralization may, at the same time, delegitimate politically his exercise of governmental power. Specifically, increased visibility and centralization may diminish the president's ability to mediate conflict (Part II), subject him to an instrumentally inappropriate standard of personal moral evaluation (Part III), result in an overassessment of personal presidential error (Part IV), and lead to an overassessment of the president's responsibility for government and social outcomes (Part V). Although these potential consequences are powerfully affected by cultural perceptions and vary in importance according to context, taken together they can help explain many of the difficulties faced by a more visible and centralized modern presidency. At the same time, these generic effects serve to undermine some of the common analytic assumptions underlying the legal and public choice analyses of a unitary, centralized presidency. My point is not that a modern centralized presidency is overall weaker as a result of the changes (it probably is not), but only that the relationship between greater centralized authority and overall influence can be quite mixed. Finally, in the Conclusion, this Article explores specifically how we might alleviate some of these negative consequences through both legal and political changes. In entering the legal and policy debate over the presidency, thisArticle reflects two rather distinct approaches. First, it focuses on the informal political consequences of legal structure, especially [\*839]  mediating political conflict and assessing error. Given the heightened visibility of and information about political actors, these informal consequences may be becoming more important in understanding the influence of the president. [**27**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n27) Yet, as explained below, scholars writing in both the unitary president and public choice traditions often deemphasize the importance of these two informal effects. This is perhaps because public choice scholars operate under the assumption that "preferences" are given, [**28**](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a#n28) while legal academics tend to overlook the systemic impact of formal legalauthority on informal political power. **[29](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n29" \t "_self)** Although I will rely in many places on public choice and legal analysis, this Article is a work of mid-level analysis. I seek to integrate the insights of therational choice tradition with more textured claims about political psychology, information asymmetries, and American culture.  [\*840] Second, to understand the effects of these informal factors on the power of the presidency, this Article adopts a fairly abstract approach. References to individual presidents, which I plan to develop further in a future article, are offered primarily for illustrative purposes. This method contrasts with many political science pieces on the presidency that seek to explain the strength of the institution in terms of individual personalities or styles. These "great person" theories are rich in detail but offer no analysis that can be usefully generalized or evaluated. **[30](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n30" \t "_self)** Legal studies, on the other hand, tend to engage in a formal doctrinal analysis but ignore informal political factors or fail to incorporate them systematically into their formal analysis. **[31](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n31" \t "_self)** If one broadens the analysis of the presidency to include these informal perspectives, however, the political singularity of the president - viewed positively under public choice models of collective action and unitary president proposals - emerges as a potential source of his weakness. **[32](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n32" \t "_self)**  [\*841] I. The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," **[33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self)** which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. **[34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self)** Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." **[35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self)** Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842]  evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties **[36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self)** and the rise of the media, as well as legal changes, such as the ascendancy of primaries. **[37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self)** Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 **[38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self)** and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. **[39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self)**  [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." **[40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self)** Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. **[41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self)** Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. **[42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self)** At the same time, the president can establish [\*844]  a "focal point" around preferred public policies. **[43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self)** This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. **[44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self)** Complex institutions, such as Congress, have difficulty [\*845]  assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, **[45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self)** may greatly facilitate public understanding and acceptance of policy. **[46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self)** B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, **[47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self)** power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846]  president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations **[48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self)** reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. **[49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self)** To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. **[50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self)** By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways.  [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. **[51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self)** For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal governmentis the national effect of its policies, which under this view can be reconciled most easily at the top. **[52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self)** To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. **[53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self)** Second, **centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance**. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. **[54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self)** Only those most [\*848]  interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. **[55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self)** By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. **[56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self)** Because he is more likely to approximate the views of the median voter, **[57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self)** a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "ThePeople." This democratic legitimacy should be, in turn, a major source of his political strength. **[58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self)** As one commentator has [\*849]  argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." **[59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self)** Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. **[60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self)** A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. **[61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self)** **A central and visible figure such as the president**, **who can take clear positions, can serve as a unique focal point for** coordinating **action**. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) **With the ability to** **focus public attention** and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self)  [\*850]  **a president can** also **be** **highly effective** in overcoming narrow but powerful sources of opposition and **in facilitating communication** (that is, coordination and cooperation) between groups and branches. **[64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self)** In technical terms, he might be viewed as the "least cost avoider." **[65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self)** The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. **[66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self)** In this regard, it is not surprising that moststudies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. **[67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)**

***Presidential action is perceived globally***

**Sunstein 95** [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

**With the emergence of the U**nited **S**tates **as a world power**, **the President's foreign affairs authority has become far more capacious** than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. **The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the U**nited **S**tates **is so central an actor on the world scene. The posture of the President** **means a great deal even if the President acts clearly within the scope of his constitutionally-granted power**. Indeed, **mere words from the President**, at a press conference or during an interview, **can hav**e **enormous consequences** **for the international community.**

### A2: XO’s Not Legally Binding

#### XOs, proclamations, memorandum, etc are legally binding---we can call our CP whatever we want

Graham G. Dodds 13, Associate Professor, pol sci, Concordia. Take Up Your Pen: Unilateral Presidential Directives in American Politics, 9-10

Beyond executive orders, proclamations, and memoranda, there are several other types of unilateral presidential directives that have at times been significant. For example, presidential determinations can be a means of exercising executive discretion in subjecting entities to regulations, as Hill Clinton’s “Presidential Directive” 95—45 exempted the Air Force’s secret “Area 51” military base in Nevada from environmental disclosure laws. So-called administrative orders have been used to create and organ izc the Federal Emergency Management Agency (FEMA). among other purposes. And the various types of national security directives are certainly important and afford presidents a powerful means of independent policymaking, but they are closely tied to the president’s capacity as commander in chief and are usually veiled in secrecy. Most national security directives are not made public. According to the General Accounting Office (GAO), even the relevant congressional committees often do not sec these dircctives,2¶ The ambiguous number and nature of unilateral presidential directives. and the unclear relations among them, can easily lead to confusion. For example, George H. W. Hush’s Executive Order 12.807 of 1992 was intended to direct the Coast Guard to return Haitian refugees to Haiti. However, the order did not specilically mention Haitian refugees per se. That detail was contarned in a press release, which stated: “President Hush has issued an executive order which will permit the US. Coast Guard to begin returning Haitians p.ckcd up at sea directly to Haiti.” In Salt a’. Ha,n an Ccntera Council, 509 U.S. 15$ (1993). the Supreme Court ruled that the press release was a sufficient articulation of the policy, as if incxaciitudc in unilateral presidential directives were to be expected and tokratcd.’ Such confusion can be compounded by the fact that presidents are generally free to decide what to call a particular directive and can even create entirely new types of diretives if they want.”¶ Given the ambiguity among the different types of unilateral presidential directives, ii makes sense to construe the topic broadly, rather than to locus narrowly on one parikular type. This book focuses mostly on executive orders, proclamations, and memoranda. They are arguably the most common, most important. and most accessible types of unilateral presidential directives, and they are similar in their Iustitications and usage. Furtherm ore, I focus on nonmilitary directives, since military orders are a fairly discrete set of unilateral presidential directives, and insofar as they are rooted in the president’s constitutional position as commander in chief, they may be less constitutionally controversial. I also exclude presidential signing statements from my analysis, since they also constitute a distinctly different type of unilateral presidential tool, and they differ from other directives in that they are less clearly legally binding.”¶ Authority¶ If executive orders, proclamations, memoranda. and other unilateral presidential directives merely expressed the presidents view, then they would he important but not necessarily determinative. However, these directives are not mere statements of presidential preferences; rather, they establish binding policies and have the force of law, ultimately backed by the full coercive power of the state. In Annstrong v. U.,jtcd Stairs, 80 U.s. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (1)-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” Politically, that may he true, as unilateral presidential directives represent the will on1y of the chief executive and lack the direct endorse. ment of congressional majorities. But constitutionally and legally, a unilateral presidential directive is as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress. courts, or by a future unilateral presidential directive.

#### Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the** reverence for precedent. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

#### XOs work—equivalent to laws, hard to overturn

Zellmer, 13 (Sandra Zellmer\*, \* Robert B. Daugherty Professor of Law, University of Nebraska College of Law, Notre Dame Law Review, June 2013, 88 Notre Dame L. Rev. 2323, “SYMPOSIUM: THE AMERICAN CONGRESS: LEGAL IMPLICATIONS OF GRIDLOCK: TREADING WATER WHILE CONGRESS IGNORES THE NATION'S ENVIRONMENT” Lexis, jj)

Other executive branch portaging strategies include presidential executive orders, such as the one mentioned above and described in more detail below, authorizing OIRA to review denials of rulemaking petitions. By directing federal agen-cies to work on specified priorities, executive orders have a profound influence on how the government executes its policy initiatives. n475

Presidents have made extensive use of executive orders since 1789. n476 The President is empowered to issue orders to federal agencies as necessary for the "faithful execution of laws passed by Congress." n477 Such orders typically compel "officers of the executive branch ... to take an action, stop a certain type of activity, alter policy, change man-agement practices, or accept a delegation of authority under which they will henceforth be responsible for the imple-mentation of law." n478

Executive orders are equivalent to laws n479 and are entitled to a "strong presumption" of validity. n480 So long as the orders are based on a constitutional [\*2391] or statutory grant of power to the President, the Supreme Court has upheld them. n481 In over 200 years, the courts have overturned only two executive orders. n482 These two judicial opin-ions demonstrate that "the President has no authority to act in any way that supplants the will of Congress, unless his actions draw from a power specifically delegated to him by the Constitution." n483 However, the mere fact that Congress considered but failed to adopt a position subsequently taken up by an executive order does not justify invalidating the order. n484

It appears that President Obama may be willing to utilize his Executive Order power broadly in his second term as a counterweight to congressional inaction, at least with respect to climate change. As the New York Times reported:

President Obama made addressing climate change the most prominent policy vow of his second Inaugural Address, setting in motion what Democrats say will be a deliberately paced but aggressive campaign built around the use of his executive powers to sidestep Congressional opposition... . Despite the renewed attention to climate change following Hurricane Sandy and record-high temperatures in the continental United States last year, there is little sign that the poli-tics of the issue [in Congress] will get any easier for Mr. Obama. n485

***XOs have the force of law and can effectively implement policy***

**Mayer 1** [Kenneth, Professor of Political Science @ University of Wisconsin – Madison, *With the Stroke of a Pen]*

These chronicles of presidential decisiveness and unilateral action are at odds with the prevailing scholarly view of presidential power. Among political scientists the conventional wisdom is that the president is weak, hobbled by the separation of powers and the short reach of his formal legal authority. **Presidential power, far from being a matter of prerogative or legal rule, “is the power to persuade,”** wrote Richard Neustadt in the single most influential statement about the office in the past fifty years.6 **Yet throughout U.S. history presidents have relied on their executive authority to make unilateral policy without interference from either Congress** or the courts. In this book, I investigate how **presidents** have **used** a tool of executive power—**the executive order—to wield their inherent legal authority.** **Executive orders a**re, loosely speaking, presidential **directives that require or authorize some action within the executive branch** (though they often extend far beyond the government).Th**ey are presidential edicts, legal instruments that create or modify laws, procedures, and policy by fiat**. Working from their position as chief executive and commander in chief, **presidents have used executive orders to make momentous policy choices**, creating and abolishing executive branch agencies, reorganizing administrative and regulatory processes, determining how legislation is implemented, and taking whatever action is permitted within the boundaries of their constitutional or statutory **authority. Even within the confines of their executive powers, presidents have been able to “legislate” in the sense of making policy that goes well beyond simple administrative activity**. Y ale Law School professor E. Donald Elliot has argued that many of the thousands of executive orders “plainly ‘make law’ in every sense,”7 and Louis Fisher finds that despite the fact that the Constitution unambiguously vests the legislative function in Congress, “the President’s lawmaking role is substantial, persistent, and in many cases disturbing.”8

### A2: XO’s = Delay

***XOs are quick and avoid bureaucratic rulemaking – only the plan would get delayed by procedural requirements***

**Cooper 2** [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”*]

Ex**ecutive** o**rder**s **are** often used because they are **quick**, convenient, **and** relatively **easy mechanisms for moving significant policy initiatives**. Though it is certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors. **The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid sometimes equally time consuming administrative procedures**, particularly the rulemaking processes require by the Administrative Procedure Act**. Because those procedural requirements do not apply to the president, it is tempting for the executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to more through the process**. Moreover, there is the added plus from the agency’s perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president’s order than it is to move an agency to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy’s executive order on that process specifically provides orders generated elsewhere.

#### Executive fiat is faster than congressional and avoids separation of powers

Endelman & Mehta 9

(Gary Endelman obtained a BA. History, University of Virginia, PhD in U.S. History, University of Delaware (1978), J.D., University of Houston (1984). He has practiced immigration and nationality law in Houston in private practice (1985-1995) and as the in-house immigration counsel for BP America Inc. & Cyrus D. Mehta a graduate of Cambridge University and Columbia Law School, is the Managing Member of Cyrus D. Mehta & Associates, PLLC in New York City. The firm represents corporations and individuals from around the world in a variety of areas such as business and employment immigration, family immigration, consular matters, naturalization, federal court litigation and asylum.) [“The Path Less Taken: Is There An Alternative To Waiting For Comprehensive Immigration Reform?” online @ http://www.ilw.com/articles/2009,0225-endelman.shtm]

Dinesh Shenoy made a huge first step but it was only a first step. Is action by Congress the only, or even the best, way to break the priority date stranglehold on US immigration policy? The authors do not think so. Amendment of INA Section 245 is unlikely since action by Congress, even in the best of times, takes time. When Congress finds such time, legalization and other priority items (like recapture of unused visas) will absorb it. Beyond this, is it necessary to relax the rules on adjustment of status? What do potential immigrants really want for themselves and their spouses? The ability to work in the United States on a long-term basis and travel back home for vacation and/or family emergency. Can they only do that as adjustment applicants? Is there another way? The authors think there is. While INA Section 245 conditions adjustment of status on having a current priority date and meeting various conditions,9 there would be prohibition anywhere that would bar USCIS from allowing the beneficiary of an approved I-140 or I-130 petition to apply for an employment authorization document (EAD) and advance parole. No action by Congress would be required; executive fiat suffices. For those who want some comfort in finding a statutory basis, the government could rely on its parole authority under INA Section 212(d)(5) to grant such interim benefits either for "urgent humanitarian reasons" or "significant public benefit.10 There is nothing in 8 CFR Section 212.5 that would prohibit the DHS from granting parole for this reason on the grounds that the continued presence of I-140 or I-130 beneficiaries provide a significant public benefit. Since such parole is not a legal admission,11 there is no separation of powers argument since the Executive is not trying to change existing grounds of admission or create any new ones. Moreover, Congress appears to have provided the government with broad authority to provide work authorization to just about any non-citizen.12

### A2: XO’s Fail – No Funding

#### Presidents have discretionary spending to fund their objectives.

Pika 02

(Joseph A Pika, John Anthony Maltese, and Norman Thomas, professors of political science, *The Politics of the Presidency,* 5th edition, p. 233)

In addition to budgeting, presidents have certain discretionary spending powers that increase their leverage over the bureaucracy. They have substantial nonstatutory authority, based on understandings with congressional appropriations committees, to transfer funds within an appropriation and from one program to another. The committees expect to be kept informed of such "reprogramming" actions.81 Fund transfer authority is essential to sound financial management, but it can be abused to circumvent congressional decisions. In 1970, for example, Nixon transferred funds to support an extensive unauthorized covert military operation in Cambodia. Nevertheless**,** Congress has given presidents and certain agencies the authority to spend substantial amounts of money on a confidential basis, the largest and most controversial of which are for intelligence activities.

#### Kennedy proves

Howell 5

William G. Howell, Associate Professor of Government @ Harvard University, September 2005, Presidential Studies Quarterly, Unilateral Powers: A Brief Overview

As evidence of this last scenario, **recall Kennedy's** 1961 **executive order creating the Peace Corps. For several years** prior, **Congress had** considered, and **rejected, the idea** of creating an agency that would send volunteers abroad to perform public works. Republicans in Congress were not exactly thrilled with the idea of expending millions on a "juvenile experiment" whose principal purpose was to "help volunteers escape the draft"; and Democrats refused to put the weight of their party behind the proposal to ensure its passage (Whitnah 1983). **By unilaterally creating the Peace Corps** in 1961, **and then using contingency accounts to fund it during its first year, Kennedy managed to change all of this.** For when Congress finally got around to considering whether or not to finance an already operational Peace Corps in 1962, **the political landscape had changed dramatically**-the program had almost 400 Washington employees and 600 volunteers at work in eight countries. **Congress, then, was placed in the uncomfortable position of having to either continue funding projects it opposed, or eliminate personnel** who had already been hired and facilities that had already been purchased. **Not surprisingly, Congress stepped up and appropriated all the funds** Kennedy requested.

## Specific Solvency

### XOs Solve – Marine Spatial Planning

#### OBAMA CAN ISSUE XOs FOR MSP

XO 13547 7/19/2010

[“Executive Order 13547 --Stewardship of the Ocean, Our Coasts, and the Great Lakes” online @ <http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>, loghry]

This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal, local, and regional decisionmaking and planning processes. These regional plans will enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple uses across sectors and improve the conservation of the ocean, our coasts, and the Great Lakes.

#### PRECEDENT FOR MSP XOs

Carolyn Elefant (Owner of the Law Offices of Carolyn Elefant in Washington D.C.) 10/19/2010

[“Executive Order Creating National Oceans Council and Implementing Coastal Marine Spatial Planning” online @ <http://lawofficesofcarolynelefant.com/renewablesoffshore/?p=573>, loghry]

On July 19, 2010, President Obama signed an Executive Order (EO) adopting a new, national marine stewardship policy focused on protection of the ocean, coastal and Great Lakes ecosystems. The EO adopts the recommendations of the Interagency Ocean Policy Task Force, which includes creating a National Ocean Council (NOC) to implement a new ocean policy and guide development of regional coastal and marine spatial plans (CMSP).

According to the Ocean Renewable Energy Coalition (OREC), the “policy established by the Executive Order is fairly benign.” The first part of the EO establishes a national ocean policy for ocean stewardship and implementation principles. Provisions include measures to protect the health of federal oceans and its ecosystems. The second part focuses on development of CMSP as a way to achieve national policy objectives. Nine regional bodies will be established to develop regional level CMSPs that reflect broader national goals; the NOC has authority to approve the regional plans.

### XOs Solve – Carbon Sequestration

#### EXECUTIVE HAS AUTHORITY OVER CARBON EMISSIONS – PRECEDENT FOR SEQUESTRATION

Michael Bastasch (staff) 5/5/2014 [“Podesta: Congress Can’t Stop Obama On Global Warming” online @ <http://dailycaller.com/2014/05/05/podesta-congress-cant-stop-obama-on-global-warming/>, loghry]

Podesta authored a report in 2010 outlining ways the president could use his executive authority to push a progressive agenda, including unilateral actions on climate policy. Podesta wrote that the president could use executive power to reduce U.S. carbon dioxide emissions by 17 percent by 2020 — the very goal the Obama plans to meet using his executive powers.¶ Podesta also wrote that the Environmental Protection Agency could “spur the retirement of coal-fired power plants” and replace them with natural gas plants by imposing stricter emissions limits. Last year, the EPA announced limits that would effectively ban coal-fired power plants unless they install costly carbon capture and storage technology — the result of an Obama executive order from last year.

## A2: Rollback Deficits

### A2: Rollback – Generic

#### 1) Fiat solves rollback – it’s justified

#### - Reciprocal – aff gets durable fiat means the neg should too

#### - Ground – ensures aff doesn’t lose on backlash and its key to neg ground

#### - Education – avoids should/would debates and focuses on the merits of the plan

***2) Most executive orders aren’t overturned.***

**Murray 99** [Frank, “Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Washington Times http://www.englishfirst.org/13166/13166wtgeneral.html]

Clearly, Mr. Clinton knew what some detractors do not: **Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books** 54 years after his death **are 80** ex**ecutive** o**rder**s **issued by** Franklin D. R**oosevelt**. **No less than 187 of** Mr. **Truman's orders remain**, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor ¶ for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### 3) Executive orders are fast and won’t be rolled back

Fisher 7 (Louis Fisher, Scholar in Residence at the Constitution Project, 2007, A review of “Executive Orders and the Modern Presidency: Legislating from the Oval Office” by Adam Warber, Political Science Quarterly Vol. 121 Issue 4, 712-713, ProQuest)

A reader may draw the erroneous conclusion that the significance of executive orders is not growing. Looking at total numbers, there has been no significant increase, but executive orders are being used more frequently for policy purposes. From the administration of Franklin Roosevelt to that of John Kennedy, the percentage of policy executive orders ranged from 22.2 percent to 38.8 percent, or an average of 25.7 percent. That percentage increased to 42.8 percent from the administration of Lyndon Johnson to that of Gerald Ford, and climbed still further, to 65.6 percent from the administration of Jimmy Carter to that of Bill Clinton (p. 39). Also, Warber makes clear that presidents are at liberty to issue executive orders with little fear of legislative or judicial checks. Without pushback from other branches, executive orders remain a potent weapon.

### A2: Future Presidents

#### 1) Fiat solves rollback – it’s justified

#### - Reciprocal – aff gets durable fiat means the neg should too

#### - Ground – ensures aff doesn’t lose on backlash and its key to neg ground

#### - Education – avoids should/would debates and focuses on the merits of the plan

#### Future presidents will follow the CP --- even if it’s not legally binding, ignoring it would incur massive political costs

* Informal binding effective --- even if they win no institution enforces it

Posner & Vermeule ’11, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 138, jj

More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

#### Won’t be overturned by future presidents

Branum 2 --- Associate, Fulbright & Jaworski L.L.P., Houston, Texas. J.D. University of Texas; Austin (Tara L., Journal of Legislation, “PRESIDENT OR KING? THE USE AND ABUSE OF EXECUTIVE ORDERS IN MODERN-DAY AMERICA,” 28 J. Legis. 1)

Congressmen and private citizens besiege the President with demands [\*58] that action be taken on various issues. n273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. n274 Many were controversial and the need for the policies he instituted was debatable. n275 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. n276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

***-- Political barriers check – new, stronger constituencies***

**Branum 2** [Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation]

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, **once a president has signed an** ex**ecutive** o**rder, he often makes it impossible for a subsequent administration** **to undo his action without enduring the political fallout** of such a reversal. For instance, President **Clinton issued** a slew of ex**ecutive** o**rder**s **on environmental issues** in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) **Many were controversial** **and the need** for the policies he instituted was **debatable**. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) **Nevertheless**, President **Bush** **found himself unable to reverse the orders without invoking the ire of environmentalists** across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became **law by the action of one man without the healthy debate and discussion in Congress intended by the Framers**. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### A2: Congress

#### 1) Fiat solves rollback – it’s justified

#### - Reciprocal – aff gets durable fiat means the neg should too

#### - Ground – ensures aff doesn’t lose on backlash and its key to neg ground

#### - Education – avoids should/would debates and focuses on the merits of the plan

#### 2) Its extremely difficult to challenge executive orders

Cooper 97 [Phillip, Prof of Public Administration @ Portland State, Nov 97, “Power tools for an effective and responsible presidency” Administration and Society, Vol. 29, p. Proquest]

**If Congress does challenge an** exe**cutive** o**rder, then the president must either demonstrate that he properly interpreted the statute in question or that the action can be independently justified from executive powers delegated by the Constitution**. However, **it can, for a variety of reasons, be very difficult to get a legal challenge into court, and even if such a case does reach a judicial assessment, the broad kinds of grounds that can be asserted by the president can make it extremely difficult to challenge a presidential action. It has been done but it is not a simple matter** (Note, 1987a).

#### There is a 0.2% risk of an overturn

Krause and Cohen 2000 [George and David, Professors of Political Science @ South Carolina, “Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders”The Journal Of Politics, Vol. 62, No. 1, February 2000, JSTOR]

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, ex-ecutive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In ad-dition, **Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative pro-cess to reverse or stop such presidential actions**. Moe and Howell (1998) report that between 1973 and 1997, **Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the president's executive order. Therefore, presidents are likely to be very successful in implementing their own agendas through such actions**. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

***-- Congress won’t rollback even the most controversial presidential decisions.***

**Howell 3** [William G, Assistant Professor of Gov’t @ Harvard, **Powers Without Persuasion: The Politics of Direct Presidential Action** pg. 112]

The real world, obviously, is much more complicated than the unilateral politics model supposes. Uncertainties abound, and presidents frequently set policies without any assurance of congressional acquiescence. It is worth considering then, how presidents fare on those occasions when Congress does respond to a presidential directive. Do presidents tend to win most of the time? Or does Congress consistently crack the legislative whip, effectively enervating imperialistic presidents? Our theoretical expectation are relatively clear. **Because the president has access to more** (and better) **information about goings-on** in the executive branch, **members of Congress will try to change only a** small **fraction of all status quo policies** in any legislative session, and we should anticipate that **members will leave alone the majority of unilateral directives** that the president issues. While the president may occasionally overreach on a particularly salient issue, provoking a congressional response, **in most instances Congress either will do nothing at all or will endorse the president’s actions.**

#### Congress only rolled back one XO in 25 years

Olson 99

William Olson of William Olson, PC, Attorneys at Law, “The Impact of Executive Orders on the Legislative Process” http://www.cato.org/testimony/ct-wo102799.html October 27, 1999

Congress has done little more than the courts in restricting presidential lawmaking. Nevertheless, Congress did make one bold step to check executive powers in the related arenas of executive orders, states of emergency and emergency powers. The Congressional concern led to the creation of a Special Senate Committee on the Termination of the National Emergency, co-chaired by Sens. Frank Church (D-ID) and Charles Mathias, Jr. (R-MD), more than 25 years ago.

#### Executive orders rarely get rolled back – in fact, they force Congressional action

Fine and Warber 12 (JEFFREY A. FINE and ADAM L. WARBER, Associate Professor of Political Science at Clemson College of Business and Behavioral Science, 4/13/12, “Circumventing Adversity: Executive Orders and Divided Government”, Presidential Studies Quarterly Vol. 42, Issue 2, 256-274, Wiley Online)

We also should expect presidents to prioritize and be strategic in the types of executive orders that they create to maneuver around a hostile Congress. There are a variety of reasons that can drive a president's decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. By doing so, presidents are able to pressure Congress to respond, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress's hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the first place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president's order, such responses by Congress are rare (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcome without having to spend time lining up votes or forming coalitions with legislators. As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders to overcome legislative hurdles.

**Presidential action avoids Congress rollback– independent constitutional authority.**

**Howell and Lewis, Harvard and Princeton University, 2**

[William G and David E, November 2002, “Agencies by Presidential Design,” Journal of Politics Volume 64: 4, pg 1099]

**Proceeding with independent constitutional authority and authority del-** ¶ **egated over time, presidents can make policy "with the stroke of a pen" and** ¶ **effectively avoid the many institutional obstacles** (multiple committees and chambers, anonymous holds, filibusters) **that plague the legislative process** (Howell ¶ forthcoming; Mayer 2001; Moe and Howell 1999; Moe and Wilson 1994). Pres- ¶ idents often exploit the difficulties of legislative action by unilaterally setting ¶ policies that at least one-third of Congress supports, **making it virtually impos-** ¶ **sible for Congress to deliver a counterproposal that can overcome a presiden**- ¶ **tial veto**.

### A2: Courts

#### 1) Fiat solves rollback – it’s justified

#### - Reciprocal – aff gets durable fiat means the neg should too

#### - Ground – ensures aff doesn’t lose on backlash and its key to neg ground

#### - Education – avoids should/would debates and focuses on the merits of the plan

#### 2) XO’s create law with the stroke of a pen --- courts give Obama wide latitude

Meinecke ’13, Elisabeth Meinecke is Managing Editor with Townhall Magazine.¶ Prior to joining Townhall.com, Meinecke was a member of Hillsdale College's Dow Journalism Program, sports editor and beat reporter for the campus newspaper, and also contributed to Life Times, the newsletter for Southern Indiana Right to Life. She interned at Comcast SportsNet in Washington, D.C. through the National Journalism Center before joining Human Events in August 2008. She was a valued contributor to¶ Human Events before joining Townhall.com in the fall of 2010. Jan 23, 2013, Townhall, Obama's Ace: The Executive Order, <http://townhall.com/tipsheet/elisabethmeinecke/2013/01/23/obamas-ace-the-executive-order-n1494230>, jj

Times have changed. “Stroke of the pen, law of the land— kinda cool,” then-Clinton aide Paul Begala said in 1998. A century of presidential power-grabs and congressional weakness has distorted the separation of powers to the point that presidents possess a variety of instruments to implement their policies.¶ Presidential memoranda, executive orders, or proclamations— the difference between these instruments is “more a matter of form than of substance,” the Congressional Research Service explained in a 2010 report. “All three may have the force and effect of law, requiring courts to take judicial notice of their existence.”¶ American presidents since Abraham Lincoln have issued 13,689 executive orders. The U.S. Supreme Court has overturned two. Even though most orders pertain to uncontroversial issues that fall well within the authority of the president, that success rate still testifies to the broad latitude afforded presidents in shaping policy.

#### Courts won’t rollback

Richard M. Salsman 13, Contributor, covers the intersection of economics and politics. 1-28-’13, Forbes, When It Comes To Abuse Of Presidential Power, Obama Is A Mere Piker, <http://www.forbes.com/sites/richardsalsman/2013/01/28/when-it-comes-to-abuse-of-presidential-power-obama-is-a-mere-piker/>, jj

Among the more famous (or infamous) executive orders in U.S. history, FDR issued one that forcibly transferred Japanese-Americans and German-Americans to internment camps during World War II. Harry Truman issued an order to seize and nationalize all steel mills in America, during a labor strike in 1952. These were clearly rights-violating orders. On the positive side, in a famous 1957 order that was respectful of rights, Dwight Eisenhower decreed an end to racial segregation in America’s public schools. The U.S. courts have overturned only two orders: Truman’s order on steel mills, and President Clinton’s 1995 order to preclude the federal government from contracting with firms that had strike-breakers on their payroll.

#### NO RISK OF COURT ROLLBACK – ONLY FOURTEEN IN HISTORY

Emily Migliaccio (J.D. Vermont Law) 2014 [“THE NATIONAL OCEAN POLICY: CAN IT REDUCE MARINE POLLUTION AND STREAMLINE OUR OCEAN BUREAUCRACY?” VERMONT JOURNAL OF ENVIRONMENTAL LAW, online @ <http://vjel.vermontlaw.edu/files/2014/04/Migliaccio_FORPRINT1.pdf>, loghry]

Determining the authoritative reach or the constitutionality of the NOP should begin by differentiating an executive order from a plan or policy. First, “[a]n executive order is a directive issued by the President, which has the force of law and requires no action by the legislature or judiciary.”124 However, the Constitution limits the reach of a presidential executive order. In the 1952 Steel Seizure case, the United States Supreme Court completely overturned an executive order in part because, as it held, “[t]he President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”125 The Court emphasized that the Constitution vests Congress with lawmaking authority, not the President, and that “[t]he Constitution limits [the President’s] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.”126 While this Court’s decision remains primary authority for presidential directives,127 the courts have seen fit to strike down only fourteen orders, in whole or in part, out of eighty-six executive order challenges. 128 Notably, federal courts have “upheld presidential directives that were unauthorized when issued but were subsequently validated by Congress via statute.”129

## Perm Answers

### A2: Perm – Do Both

#### Links to politics – perm still includes congressional action which sparks opposition, triggering the link

#### - No shielding – simultaneous nature of fiat means there isn’t cooperation between the two branches, that’s intrinsic cooperation is not a part of the cp or plan text, voting issue – allows the aff to spike out of all neg offense

#### Doesn’t solve presidential power – simultaneous legislative and executive action creates a mixed precedent, undermining presidential authority

Bellia 2 [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

Second, courts' failure to resolve the contours of the President's constitutional powers creates uncertainty about whether some forms of constitutionally based executive action have the same legal force as a federal statute. Returning to Dames & Moore, the fact that the Court rested the President's authority on grounds of congressional approval rather than implied constitutional authority avoided the difficult question of how the President could by his sole authority displace the application of the federal statutes that had provided the basis for Dames & Moore's original cause of action against the Iranian enterprises. [291](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n291#n291" \t "_self) Similar questions arise with respect to the displacement of state law by operation of sole executive agreements. The result is confusion about whether sole executive agreements are the "supreme Law of the Land," [292](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3#n292#n292) with the available precedents suggesting that they are [293](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n293#n293" \t "_self) and the weight of recent commentary suggesting that they are not.

#### Congressional silence key to presidential power

Bellia 2 [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. The combination of congressional silence and judicial inaction has the practical effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating" or "concurrent" power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority **in the face of congressional opposition**. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### A2: Perm Do CP

#### 1. The counterplan competes --- our interpretation is that absent specification in the 1ac the aff has to defend the entirety of the United States federal government taking action.

#### This is best for Negative ground – discussion of the agent is vital to substantively engage the affirmative

#### 2. They sever phrase “USFG” in their plan text ---

#### The means whole

Merriam Websters

[http://www.merriam-webster.com/dictionary/the]

4—used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### That means all 3 branches have to act

Blacks Law ‘90

(p. 695)

In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

#### Severance is a voter – skews neg strat, ground, are unpredictable, make the 1ac a moving target which is uniquely bad because plan is focus of entire debate

#### 2ac clarifications of the actor are bad – skew 1nc strategy, make the plan a moving target, encourages vague plan writing – it’s a voter for ground

## Politics Net Benefit

**2NC A2: XO Links to Politics / Politics is a NB**

**And the CP preserves Obama’s horse trading and compromise abilities – plan doesn’t**

**Sovocool and Sovocool, ‘09** - Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization. He is also an Assistant Professor at the Lee Kuan Yew School of Public Policy at the National University of Singapore AND Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore (Benjamin and Kelly, 34 Colum. J. Envtl. L. 333, “Preventing National Electricity-Water Crisis Areas in the United States,” lexis)

**Executive Orders also save time** in a second sense. **The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horse-trading and compromise such legislative activity entails**. n292

**Executive orders don’t link to politics- Prefer our evidence in context of Obama**

**Davies ‘09 -** Washington correspondent; Previously been the State Political Editor and Urban Affairs editor for The Sydney Morning Herald, spent ten years covering Federal politics (Anne, The Age, “100 days in FDR's shadow”, April 25, 2009 Saturday )

Beyond his core priorities, **Obama has limited himself to actions that can be achieved by executive order or require no political capital to be spent with Congress: closing Guantanamo by July, banning torture in CIA jails, restoring federal funding for embryonic stem cell research, pushing through legislation dealing with gender discrimination in the workplace, and**, of course, **reprioritising US efforts in Iraq and Afghanistan, which he can do as commander-in-chief. Reforms** such as banning assault weapons, **which would require legislation and a major political battle, have quickly been jettisoned. Instead, virtually all Obama's political capital has been invested in winning congressional support for his economic measures**, which carry the seeds of his larger agenda. He won Congress support for his $US787 billion ($A1111billion) stimulus package, the biggest in US history, in 20days.

#### Executive action is quicker and avoids special interests debates that bog down the plan

**Katyal 06** Neal Kumar Katyal, Yale Law Journal, Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within, http://www.yalelawjournal.org/pdf/115-9/Katyal.pdf

Before getting into the substance of the proposals, it is worth taking up a ¶ criticism that might be present off the bat. Aren’t all proposals for bureaucratic ¶ reform bedeviled by the very forces that promote legislative inertia? If ¶ Congress can’t be motivated to regulate any particular aspect of the legal war ¶ on terror, then how can it be expected to regulate anything more far-reaching? ¶ The answer lies in the fact that **sometimes broad design choices are easier to** ¶ **impose by fiat than are specific policies**.23¶ **Any given policy proposal can get mired in a competition of special** ¶ **interests; indeed, that danger leads many to prefer executive action**. ¶ **Institutional design changes differ from these specific policy proposals because** ¶ **they cut across a plethora of interest groups and because the effects on** ¶ **constituencies are harder to assess due to the multiplicity of changes.** The ¶ benefits of faction that Madison discussed in The Federalist No. 51 therefore ¶ arise; multitudes of interest groups find things to embrace in the system ¶ change. It is therefore not surprising that at the same time that Congress ¶ dropped the ball overseeing the legal war on terror it enacted the most ¶ sweeping set of changes to the executive branch in a half-century in the form of the Homeland Security Act 0f 2002.24 Indeed, as we shall see, that Act provides ¶ an object lesson: Design matters. And by altering bureaucratic arrangements, ¶ stronger internal checks can emerge.

**Avoids congressional fights**

**Mayer, ‘01** (Kenneth, professor of political science at the University of Wisconsin, With the Stroke of a Pen: Executive Orders and Presidential Power, p. 4-5)

Presidents used executive orders to prod and drag Congress when the legislature refused to enact significant new protections, and to steer a middle course that would not prove excessively antagonizing to the Suth. By relying on executive orders to embark on such a different course, “presidents began to pick their way warily through the minefield” of racial politics. Presidential involvement was crucial, in that it established the federal government’s role in civil rights enforcement: scarcely a decade after Roosevelt’s 1941 establishment of the Fair Employment Practices Committee in 1941 (an important but ultimately ineffective organization), the validity of presidential nondiscrimination efforts was “assumed,” and White House officials recognized efforts to back away from the precedent of nondiscrimination in federal activities would provoke sharp opposition.

**Obama can pass laws without using political capital**

**Jacobine 10**

Ken Kenn Jacobine is an international educator currently teaching history for the American School of ¶ Doha, Qatar. He has also taught at international schools in Ecuador, Mali, and Zambia. 2-16-2010, <http://blogcritics.org/politics/article/executive-orders-nullification-and-recess-appointments/>,

**With no political capital left and much of his legislative initiatives dead in Congress,** President **Obama’s administration recently announced that he intends to use executive orders to advance his agenda.** According to White House chief of staff Rahm Emanuel, “We are reviewing a list of presidential executive orders and directives to get the job done across a front of issues”. Those issues include everything from budget commissions to environmental law to health care funding.¶ Of course, **executive orders are nothing new**. They have been around since at least Lincoln’s so called “Emancipation Proclamation” and probably before that. George W. Bush signed the most ever as president and was rightly criticized by Obama in his campaign for president. **This is key because it doesn’t matter which party controls the White House. When push comes to shove and the president can’t get his way he resorts to this** underhanded tactic.

#### Empirics are on our side

Warshaw ’06

(Shirley Anne, Prof of Pol. Science @ Gettysburg College, “Administrative Strategies of President George W. Bush” Extensions Journal, Spring 2006, <http://www.ou.edu/special/albertctr/extensions/spring2006/Warshaw.pdf>)

However, in recent administrations, particularly **since the Reagan administration**, **presidents have often bypassed Congress using administrative actions. They have opted for a strategy through administrative actions that is less time-consuming and clearly less demanding of their political capital.** Using an array of both formal and informal executive powers, **presidents have effectively directed the executive departments to implement policy without any requisite congressional authorization**. In effect, presidents have been able to govern without Congress. **The arsenal** of administrative actions available to presidents **includes the power of appointment, perhaps the most important of the arsenal, executive orders**, executive agreements, proclamations, signing statements, and a host of national security directives.1 More than any past president, George W. Bush has utilized administrative actions as his primary tool for governance.

#### CP preserves PC - avoids having to rally and compromise

Howell ’05

(William, Associate Prof @ Harvard, “Unilateral Powers: A Brief Overview”, September 2005, Presidential Quarterly, <http://www.blackwell-synergy.com/doi/full/10.1111/j.1741-5705.2005.00258.x>)

The actions that Bush and his modern predecessors have taken by fiat do not fit easily within a theoretical framework of executive power that emphasizes weakness and dependence, and offers as recourse only persuasion. For at least two reasons, the ability to act unilaterally is conceptually distinct from the array of powers presidents rely upon within a bargaining framework. First, **when presidents act unilaterally, they move policy first and thereby place upon Congress and the courts the burden of revising a new political landscape.** If they choose not to retaliate, either by passing a law or ruling against the president, then the president's order stands. Only by taking (or credibly threatening to take) positive action can either adjoining institution limit the president's unilateral powers. Second, when the president acts unilaterally, he acts alone. Now of course, he relies upon numerous advisers to formulate the policy, to devise ways of protecting it against congressional or judicial encroachment, and to oversee its implementation (more on this below). **But in order to issue the actual policy, the president need not rally majorities, compromise with adversaries, or wait for some interest group to bring a case to court. The president, instead, can strike out on his own**. Doing so**, the modern president is in a unique position to lead, to break through the stasis that pervades the federal government, and to impose his will in new areas of governance.**

**Unilateral action avoids the politics DA – doesn’t spend political capital.**

**Howell, Associate Professor of Government @ Harvard University, 5** (William G., Associate Professor of Government @ Harvard University, “Unilateral Powers: A Brief Overview,” *Presidential Studies Quarterly*, 35, no. 3, September, p. 421)

The actions that Bush and his modern predecessors have taken by fiat do not fit¶ easily within a theoretical framework of executive power that emphasizes weakness and¶ dependence, and offers as recourse only persuasion. For at least two reasons, the ability¶ to act unilaterally is conceptually distinct from the array of powers presidents rely upon¶ within a bargaining framework. First, **when presidents act unilaterally**, **they move policy first and thereby place upon Congress and the courts the burden of revising a new political landscape**. If they choose not to retaliate, either by passing a law or ruling against¶ the president, then the president’s order stands. **Only by taking** (or credibly threatening¶ to take) **positive action can either adjoining institution limit the president’s unilateral powers**. Second, **when the president acts unilaterally**, **he acts alone.** Now of course, he¶ relies upon numerous advisers to formulate the policy, to devise ways of protecting it¶ against congressional or judicial encroachment, and to oversee its implementation (more¶ on this below). But **in order to issue the actual policy, the president** **need not rally majorities**,¶ **compromise with adversaries**, **or wait for some interest group** to bring a case to¶ court. **The president**, instead, **can strike out on his own**. Doing so, **the modern president is in a unique position to lead**, **to break through the stasis that pervades the federal government, and to impose his will in new areas of governance.**¶ **The ability to move first and act alone**, then, **distinguishes unilateral actions from other sources of influence**. Indeed, the central precepts of Neustadt’s argument are turned¶ upside down, for unilateral action is the virtual antithesis of persuasion. Here, **presidents just act; their power** **does not hinge upon their capacity to “convince [political actors**]¶ that what the White House wants of them is what they ought to do for their sake and¶ for their authority” (Neustadt 1990, 30). **To make policy**, **presidents need not secure the formal consent of Congress**. Instead, **presidents simply set public policy and dare others to counter.** And as long as Congress lacks the votes (usually two thirds of both chambers)¶ to overturn

him, the president can be confident that his policy will stand.

***Executive orders are effective policy tools and cause momentum and defuses opposition***

**Cooper 2** [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”*

**Executive orders can** also **be used to hit quickly with policies** aimed at important problems, **providing** a **strong** **and** **immediate** sense of **momentum** for a new administration. **These** messages are sent to **reassure** an administration’s **supporters that the issue** positions for which they campaigned **are going to be acted upon**. **In the case of symbolic order**s, which are often used for this purpose**, the reward can be given to allies without a serious commitment of political resources in Congress**, legal resources in administrative rulemaking, **or financial resources** associated with building really substantive programs. **They also** serve to **send a message to** potential **adversaries that the administration is** truly **in charge and moving**. **Those seeking to mobilize opposition in such conditions find themselves reactive and defensive**.

***Executive orders reduce expenditure of political capital – Clinton proves***

**Kassop 2** [Nancy, Chair of the Political Science Department @ State University of New York, The Presidency and the Law: The Clinton Legacy, ed. Alder, p. 6]

**As a president facing an opposition party** in Congress, **it is not surprising that** President **Clinton made bold use of executive orders as a means of circumventing the uncertainties of a legislature that was unlikely to be friendly** to his initiatives. Here, too, as in war powers, Clinton followed in the paths of his Republican predecessors, who also operated under conditions of divided government. Thus, **Clinton may not have blazed new trails for his successors by his use of executive orders to accomplish** indirectly what he was unwilling to spend political capital on to accomplish directly.

***Executive orders are fast and build political capital***

**Krause and Cohen 97 [**George + David, Professors of Political Science @ South Carolina, “Presidential Use of Executive Orders” American Politics Quarterly, Vol 25 No 4, October 1997, Sage Journals Online]

The aim of this study is to answer the question: What causes presidents to issue executive orders with greater (or less) frequency in a given year? This is an important topic of inquiry, not only because of the dearth of research that has been conducted to date but also because it is a valuable way to assess both the managerial and policymaking characteristics associated with the office of the presidency. **Executive orders are another weapon in the arsenal that presidents have at their disposal. They both afford the chief executive the ability to make quick and efficient policy decisions without consultation from Congress or from the public, and they are also a tool that allows presidents to exert bargaining pressure on Congress to enact legislation more favorable to the White House**(Wigton 1996). Thus, explaining how and why executive orders are used by presidents allows scholars a better understanding of the presidency and the powers that are inherent in that office.

***Executive orders save capital by avoiding involvement with Congress***

**Fleishman 76** [Joel, Prof Law and Policy Sciences, Duke, Law & Contemporary Problems, Summer, p. 38]

**Several** related **factors**, in particular, **make executive orders** especially **attractive policymaking tools** for a President. **First is speed**. **Even if a President is** reasonably **confident of securing desired legislation** from congress, **he must wait for congressional deliberations to run their course.** Invariably, **he can achieve far faster**, if not immediate, **results by issuing an executive order**. Moreover, **when a President acts through an order, he avoids having to subject** his **policy to public scrutiny and debate**. Second is flexibility. **Executive orders have the force of law.** Yet they differ from congressional legislation in that a President can alter any executive order simply with the stroke of his pen—merely by issuing another executive order. As noted earlier, Presidents have developed the system of classifying national security documents in precisely this manner. Finally, **executive orders allow the President**, **not only to evade hardened congressional opposition**, **but also** to preempt potential or growing opposition—**to throw Congress off balance, to reduce its ability to formulate a powerful opposing position**.

***Executive orders bypass Congressional opposition to the plan – avoids politics***

Ostrow 87 [Steven, partner in the Business Department and chairs the Financial Restructuring and Bankruptcy Practice Group, B.A., cum laude, from the University of Vermont, .D. from The George Washington University National Law Center, “Enforcing Executive Orders: Judicial Review of Agency Action Under the Administrative Procedure Act” George Washington Law Review, 55 Geo. Wash. L. Rev. 659]

In this era of the "Imperial Presidency," [n1](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n1)**executive orders have become an important weapon in the arsenal of presidential policymaking**.[n2](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n2) Because executive **orders do not need congressional approval**, **they enable the President to bypass** parliamentary **debate and opposition**. [n3](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n3) Historically, most executive orders have related to routine administrative matters and to the internal affairs and organization of the federal bureaucracy. Since the 1930s, however, **executive orders have assumed an ever increasing legislative character**, directly affecting the rights and duties of private parties as well as those of governmental officials. [n4](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n4) **Scholars have referred** [\*660]  **to this** recent use of the executive order **as "presidential legislation**" or "government by executive order."

**Agencies Don’t Link to Politics**

**Executive agencies avoid the link – function under the president’s directive which diminishes congressional power.**

**Howell and Lewis, Harvard and Princeton University, 2**

[William G and David E, November 2002, “Agencies by Presidential Design,” Journal of Politics Volume 64: 4, pg 1096]

Much of this influence comes from his position as party leader and the power ¶ to veto legislation. **Presidents**, however, **hold a trump card that many scholars** ¶ **have overlooked**. **When they cannot convince Congress to build an administrative agency that they want, presidents can, and often do, strike out on their** ¶ **own**. Since the end of World War II, **presidents have unilaterally created over** ¶ **half of all administrative agencies in the United States**. Using executive orders, ¶ department orders, and reorganization plans, **presidents have established administrative agencies that would never have been created through legislative action**, ¶ and almost always, presidents design these agencies in ways **that maximize** ¶ **their control over them.** ¶ We analyze the 425 administrative agencies established between 1946 and ¶ 1995. **We find that presidents exercise significantly more control over those** ¶ **agencies that they create through a unilateral directive** **than those agencies that** ¶ **Congress and the president establish through legislation.** **We also find that congressional strength is inversely related to unilateral activity.** When Congress is ¶ strong (defined by the relative cohesion of its members' preferences), presidents create fewer administrative agencies, and when Congress is weak, they ¶ create more. **These findings suggest that the very institutional factors that undermine Congress augment presidential influence and control**.

**Executive Agency actions don’t require capital**

**Mayer and Price ‘2** (Kenneth R. Mayer, professor of political science at the University of Wisconsin Madison & Kevin Price, graduate student at the University of Wisconsin—Madison, Presidential Studies Quarterly, 6.1.02 lexis)

By using their formal powers, presidents structure the institutions that surround them to standardize their interactions with other actors. To convert the bargains that would otherwise require skill and scarce political capital into manageableleadership opportunities, presidents seek routines that encourage compliance from other actors. By creating institutions and processes that make these once-expensive bargains part of the political landscape, presidents alter default outcomes, leaving it to other actors to expend resources to undo what the president has done.

**Agencies avoid politics – the president will duck all blame**

**Shane ’95** (Peter, Dean and Professor of Law, University of Pittsburgh,“Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking”, 48 Ark. L. Rev. 161, 1995)

Such was the regulatory oversight system dedicated most faithfully to a categorical separation of powers philosophy that, in turn, was touted as advancing the cause of accountability. But even without careful parsing, the record suggests obvious accountability issues. First, it was the conclusion of the most extensive journalistic study of the Council that it intervened in "dozens of unpublicized controversies over important federal regulations, leaving what vice presidential aides call "no fingerprints' on the results of its interventions." 58 The White House's efforts to avoid public disclosure of its oversight activity took multiple forms: resisting FOIA disclosure of documents belonging to President Reagan's Task Force on Regulatory Relief on the ground that the Task Force (and, by implication, the Council) was not a covered "agency"; 59 resisting Congressional access to information about the Council beyond published fact sheets and the testimony of individuals who did not participate in Council deliberations; 60keeping decisions at staff level to shield them from the greater publicity that would likely follow cabinet level involvement. 61 Intriguingly, only one Council decision - pressuring EPA on pollution permit modifications **-** ever escalated to actual presidential involvement; 62 the usual, albeit tacit, rule was to avoid appeals to the President wherever possible. 63 It would not seem unrealistic that behind this approach lay a desire to buffer the President from criticism for Council policies, especially given a campaign promise to be the "environmental president." 64 That would, of course, be the opposite of accountability

**A2: Congressional Backlash**

**Backlash against Obama on executive actions won’t gain traction**

**Ramsey 12**

(MICHAEL D. RAMSEY, is Professor of Law at the University of San Diego School of Law, “THE FEDERALIST SOCIETY NATIONAL LAWYERS CONVENTION--2011: MEET THE NEW BOSS: CONTINUITY IN PRESIDENTIAL WAR POWERS?” Summer, 2012, Harvard Journal of Law & Public Policy, LexisNexis)

Thus **there has been an escalation in the use of unconstitutional executive war power under** President **Obama, yet there has not been an outcry against him resembling the outcry against the Bush Administration**, which was routinely attacked for exceeding the limits of executive power. n29 **Although some voices have been raised** against President Obama's claims of executive power, n30 **they have been marginalized**. **They have not** [\*871] **been taken up by the mainstream** in the manner of similar criticisms of President Bush. My speculation is that **there is an identification by legal and media elites with the establishment Democratic Party that makes it difficult for these criticisms to gain traction** in the way they did in the Bush Administration.¶ I think **this makes it easier for Democratic presidents than for Republican presidents to unconstitutionally extend executive power**. Thus **Obama's policies**, which are much more deserving of constitutional criticism, **do not generate the popular pushback** that we saw, perhaps unjustifiably, against President Bush. In any event, what is most striking about executive war power under President Obama is not the commonly recognized continuity as compared to the prior administration, but rather the increased disregard of constitutional limits.

**Congress will support executive orders**

**Covington, 12** --- School of Engineering, Vanderbilt University

(Spring 2012, Megan, Vanderbilt Undergraduate Research Journal, “Executive Legislation and the Expansion of Presidential Power,” http://ejournals.library.vanderbuilt.edu))

In actuality, however, Congress is generally unwilling or unable to respond to the president’s use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 44 The 2/3 vote of both houses needed to override a veto basically means that unless the president’s executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to limit the power of the president, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president’s actions; the War Powers Act does little to restrain the president’s ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power. 46 Congress’s best weapon against executive legislation is its appropriations power, but this only gives it power over orders that require funding. **Members of Congress may even support a president’s use of executive legislation to establish policy when gridlock occurs on the floor. Congressmen can include policy changes made through executive legislation as part of their party’s recent accomplishments for the next election cycle, giving them more incentive to support executive legislation.**47 These factors combined mean that Congress has only modified or challenged 3.8% of all executive orders, of which there have been over 13,000 total, leaving them an ineffective check on the president’s legislative power.48 Essentially the only times Congress can and will challenge an executive order are when the president has extremely low support, when in a divided government the party in power of Congress has a supermajority of both houses, or when a president seriously and obviously abuses his power in such a way as to earner opposition from both parties.

**No backlash – Congress doesn’t care about the president abusing his power.**

**Howell, Associate Professor of Government @ Harvard University, and Moe, Stanford University, 99** (William G. and Terry M, 1999, “The Presidential Power of Unilateral Action,” *The Journal of Law, Economics, and Organization*, 15, no. 1, p.144)

**What is likely to happen in Congress**, then, **when presidents take unilateral action by issuing executive orders that shift the policy status quo**? The answer¶ is that **legislative responses** (if there are any) **will be rooted in constituency**.¶ An executive order that promotes civil rights, for example, will tend to be¶ supported by legislators from urban or liberal constituencies, because it shifts¶ the status quo in their preferred direction, while members from conservative¶ constituencies will tend to oppose it. **The fact that this executive order might**¶ **well be seen as usurping Congress's lawmaking powers, or that it has the effect of expanding presidential power, will for most legislators be quite beside the**¶ **point**. Thus if Congress tries to take any action at all in responding to the¶ executive order, the battle lines will be determined by the order's effects on¶ legislative constituencies, not by its effects on Congress's power vis-a-vis the¶ president. Even when presidents arc clearly taking action to push out the¶ boundaries of their power. **Congress will not tend to vote or respond on that**¶ **basis, and will not as a result, be able to defend or promote its institutional**¶ **power very effectively**

**Their evidence does not assume unilateral action that defuses legislative opposition.**

**Howell, Associate Professor of Government @ Harvard University, and Moe, Stanford University, 99** (William G. and Terry M, 1999, “The Presidential Power of Unilateral Action,” *The Journal of Law, Economics, and Organization*, 15, no. 1, p.145-6)

**Presidents exercise two important kinds of agenda power in their relations**¶ **with Congress.** **The first is** now part of the familiar, textbook description of¶ American politics: **precisely because Congress is so fragmented, the president's policy proposals are the focal points for congressional action**. The major issues¶ Congress deals with each year, as a result, are fundamentally shaped by what¶ presidents decide will be the salient concerns for the nation. While this kind¶ of agenda power is of great consequence, **a second kind is** probably **more**¶ **important for the institutional balance of power**, yet it is rarely recognized as¶ such. **This is the agenda power that presidents exercise when they take unilateral action to alter the status quo.** When they do this, they present Congress with¶ a fait accompli—a new, prcsidcntially made law—and Congress is then in the¶ position of having to respond or acquiesce.¶ Note the key differences between these forms of agenda control. **Under the**¶ **first, presidential success ultimately requires an affirmative act by Congress**,¶ and thus that Congress go through all the laborious steps necessary to produce¶ new legislation—which is politically very difficult, often highly conflictual,¶ typically very time consuming, and in the final analysis unlikely to happen¶ (more on this below). **This is why modern presidents have incentives to shy away from the "legislative strategy" of presidential leadership** (Nathan, 1983).¶ Even with all their resources, they can expect to have a hard time getting their¶ programs through Congress.¶ On the other hand, **the second form of agenda control, rooted as it is in**¶ **unilateral action, gives the president what he wants immediately**—a shift in¶ the status quo, and perhaps a new increment to his power—and depends for its¶ success on Congress's not being able to pass new (and veto-proof) legislation¶ that would overturn or change it. Such a requirement is much more readily met¶ for it is far easier, by many orders of magnitude, to block congressional action¶ than it is to engineer new legislation. **And if this were not enough, the new status quo initiated by the president may in itself defuse legislative opposition and do away with the need to block at all**. When a president unilaterally launches an¶ invasion of another country, for instance. Congress faces a drastically different¶ set of options than it did before the conflict started, and may find itself politically¶ compelled to support and provide funds for an exercise it never would have¶ agreed to beforehand. Needless to say, these advantages of agenda control give¶ modern presidents strong incentives to favor an "administrative strategy" of¶ leadership as opposed to a "legislative strategy" (Nathan. 1983).

### XO’s Avoid Midterms

#### XOs don’t link to elections – the public doesn’t get them

Covington, ’12 (Megan, “Executive Legislation and the Expansion of Presidential Power,” Vanderbilt Undergraduate Research Journal, ejournals.library.vanderbilt.edu/index.php/vurj/article/download/3556/1738, bgm)

Public knowledge of executive orders and other forms of executive legislation is extremely low, in part because presidential directives are not usually part of the basic discussion of the government. Citizens generally are “disconnected from politics, dislike political conflict, distrust political leaders, [and] possess low levels of information about specific policies,”54 so there is no reason to believe the average American understands the complex use and nature of executive legislation. Since so many executive orders, signing statements, and memoranda are used for routine, symbolic, or house-keeping purposes, their use does not always make for an interesting story, meaning that the press does not always pay attention to or cover the use of executive legislation and the public hardly ever hears about it. Phillip J. Cooper insists that “the idea that the president could [...] govern in no small part by decree is a concept of which most Americans are blissfully unaware. If they were alert […], many would most likely be aghast that the president could, in effect, write law.”55 This ignorance of the masses ensures that the president does not really have to worry about the people’s opinion when he uses executive legislation, removing one potential limit on his unilateral power.

#### Unlike the counterplan—congressional action is high-profile

Steven E. Levingston | October 5, 2010, The Washington Post, Public misperceptions of Congress, <http://voices.washingtonpost.com/political-bookworm/2010/10/public_misperceptions_of_congr.html>, jj

Congress often falls so low in poll numbers that it seems easy to dismiss it as a credible, serious branch of government. But Louis Fisher believes there are major problems with this attitude. One is the failure to understand the essential role that Congress has played over its history. The other is to exaggerate the competence and credibility of the president and the Supreme Court. In part, Congress gets hammered because what it does is largely in plain sight –– certainly a more visible branch than the others. Fisher says he wrote ‘‘On Appreciating Congress: The People’s Branch," published by Paradigm, to better understand Congress. Fisher, the author of 20 books, recently retired after four decades with the Library of Congress in the Congressional Research Service and the Law Library.

#### XOs not perceived by the public

Dorian 13 Winston Dorian is a Federal Firearms Licensee (FFL). An accomplished sales professional, blogger and 2nd Amendment supporter; blog located at http://2ndamendmentright.org/ He served 8 years in the US Marine Corps as an Infantry Officer and with Special Operations. He’s an Endowment member of the NRA, NRA certified coach, former Zia Rifle & Pistol Club board member and board member for “Friends of NRA”. Washington Examiner, January 14, 2013, Are Executive Order's on Gun Control Constitutional?, http://www.examiner.com/article/are-executive-order-s-on-gun-control-constitutional

Throughout the history of our nation, President's have issued Executive Orders which are mainly administrative in nature to help run the government and departments thereof. Executive orders do not require congressional approval. Thus, the president can use them to set policy while avoiding public debate and opposition. Presidents have used executive orders to direct a range of activities, including establishing migratory bird refuges; putting Japanese-Americans in internment camps during World War II; discharging civilian government employees who had been disloyal, following World War II; enlarging national forests; prohibiting racial discrimination in housing; pardoning Vietnam War draft evaders; giving federal workers the right to bargain collectively; keeping the federal workplace drug free; and sending U.S. troops to Bosnia.

#### EXECUTIVE AGENCIES DON’T LINK TO MIDTERMS

CRISTINA M. RODRÍGUEZ (Prof. of Law, NYU, Henry E. Stimson Visiting Professor of Law, Harvard Law School.) 2010

[“CONSTRAINT THROUGH DELEGATION: THE CASE OF EXECUTIVE CONTROL OVER IMMIGRATION POLICY” DUKE LAW JOURNAL Vol. 59:1787, online @ www.law.duke.edu/shell/cite.pl?59+Duke+L.+J.+1787+pdf, loghry]

That said, the president is still more likely than Congress to adopt strategies that hew closely to facts on the ground because of the administrative apparatus at his disposal. Even if the president himself will be attentive to or controlled by identitarian interests because of his status as an elected official,59 the bureaucracy will not be nearly as susceptible to such pressures, because agency officials are not themselves subject to election (though political appointees present a different story). The bureaucracy is comparatively unaccountable,60 though this insulation does not necessarily mean reliance on the bureaucracy is undemocratic.61

## Presidential Powers NB

### 2NC – Net Benefit Overview

#### And, extend the internal net-benefit – the CP is key to revitalizing presidential power. Strong unilateral action on the plan will make Obama look strong. That’s Mayer. Strong presidential power prevents multiple conflicts from going nuclear – specifically war between China, India, and Pakistan. That’s Coes.

#### And, extinction:

#### India-Pakistan

Fai ’01 **(**Ghulam Nabi, Executive director, Kashmiri American Council, 2001, “The Most Dangerous Place,” Washington Times, July 8, p. 13)

**The most dangerous place on the planet is Kashmir**, a disputed territory convulsed and illegally occupied for more than 53 years and **sandwiched between nuclear-capable India and Pakistan. It has ignited two wars between the estranged** South Asian **rivals** in 1948 and 1965, **and a third could trigger nuclear volleys and a nuclear winter threatening the entire globe**. **The United States would enjoy no sanctuary. This apocalyptic vision is no idiosyncratic view**. The director of central intelligence, the Defense Department, and world experts generally place Kashmir at the peak of their nuclear worries. **Both India and Pakistan are racing like thoroughbreds to bolster their nuclear arsenals** and advanced delivery vehicles. Their defense budgets are climbing despite widespread misery amongst their populations. Neither country has initialed the Nuclear Non-Proliferation Treaty, the Comprehensive Test Ban Treaty, or indicated an inclination to ratify an impending Fissile Material/Cut-off Convention.

#### India-China

Kahn ’09 (Jeremy, Masters Degree in IR from London School of Economics and freelance journalist based in New Delhi, 10/10, Newsweek, “Why India Fears China”, <http://www.newsweek.com/2009/10/09/why-india-fears-china.html>)

China claims some 90,000 square kilometers of Indian territory. And most of those claims are tangled up with Tibet. Large swaths of India's northern mountains were once part of Tibet. Other stretches belonged to semi-independent kingdoms that paid fealty to Lhasa. Because Beijing now claims Tibet as part of China, it has by extension sought to claim parts of India that it sees as historically Tibetan, a claim that has become increasingly flammable in recent months.

Ever since the anti-Chinese unrest in Tibet last year, progress toward settling the border dispute has stalled, and the situation has taken a dangerous turn. The emergence of videos showing Tibetans beating up Han Chinese shopkeepers in Lhasa and other Tibetan cities created immense domestic pressure on Beijing to crack down. The Communist Party leadership worries that agitation by Tibetans will only encourage unrest by the country's other ethnic minorities, such as Uighurs in Xinjiang or ethnic Mongolians in Inner Mongolia, threatening China's integrity as a nation. Susan Shirk, a former Clinton-administration official and expert on China, says that "in the past, Taiwan was the 'core issue of sovereignty,' as they call it, and Tibet was not very salient to the public." Now, says Shirk, Tibet is considered a "core issue of national sovereignty" on par with Taiwan.

The implications for India's security—and the world's—are ominous. It turns what was once an obscure argument over lines on a 1914 map and some barren, rocky peaks hardly worth fighting over into a flash point that could spark a war between two nuclear-armed neighbors. And that makes the India-China border dispute into an issue of concern to far more than just the two parties involved. The United States and Europe as well as the rest of Asia ought to take notice—a conflict involving India and China could result in a nuclear exchange. And it could suck the West in—either as an ally in the defense of Asian democracy, as in the case of Taiwan, or as a mediator trying to separate the two sides. Beijing appears increasingly concerned about the safe haven India provides to the Dalai Lama and to tens of thousands of Tibetan exiles, including increasingly militant supporters of Tibetan independence. These younger Tibetans, many born outside Tibet, are growing impatient with the Dalai Lama's "middle way" approach—a willingness to accept Chinese sovereignty in return for true autonomy—and commitment to nonviolence. If these groups were to use India as a base for armed insurrection against China, as Tibetan exiles did throughout the 1960s, then China might retaliate against India. By force or demand, Beijing might also seek to gain possession of important Tibetan Buddhist monasteries that lie in Indian territory close to the border. Both politically and culturally, these monasteries are seen as key nodes in the Tibetan resistance to Chinese authority. Already Beijing has launched a diplomatic offensive aimed at undercutting Indian sovereignty over the areas China claims, particularly the northeast state of Arunachal Pradesh and one of its key cities, Tawang, birthplace of the sixth Dalai Lama in the 17th century and home to several important Tibetan monasteries. Tibet ceded Tawang and the area around it to British India in 1914. China has recently denied visas to the state's residents; lodged a formal complaint after Indian Prime Minister Manmohan Singh visited the state in 2008; and tried to block a $2.9 billion Asian Development Bank loan to India because some of the money was earmarked for an irrigation project in the state. All these moves are best understood in the context of China's recent troubles in Tibet, with Beijing increasingly concerned that any acceptance of the 1914 border will amount to an implicit acknowledgment that Tibet was once independent of China—a serious blow to the legitimacy of China's control over the region and potentially other minority areas as well. The reports of Chinese incursions can be read as a signal that it is deadly serious about its territorial claims. The exact border has never been mutually agreed on—meaning one side's incursion is another side's routine patrol—but the Chinese have clearly stepped up their activity along the frontier. The Indian military reported a record 270 Chinese border violations last year—nearly double the figure from the year before and more than three times the number of incidents in 2006, says Brahma Chellaney, an expert in strategic studies at New Delhi's Centre for Policy Research, an independent think tank. Noting that there was a reported incursion nearly every day this summer, Chellaney says this amounts to "a pattern of Chinese belligerence." In June the *People's Daily* criticized recent moves by India to strengthen its border defenses and declared: "China will not make any compromises in its border disputes with India." It asked if India had properly weighed "the consequences of a potential confrontation with China." To many Indians, China is an expansionist power bent on thwarting India's rise as a serious challenge to Beijing's influence in Asia. They are haunted by memories of India's 1962 war with China, in which China launched a massive invasion along the length of the frontier, routing the Indians before unilaterally halting at what today remains the de facto border, known as the Line of Actual Control (LAC). They are fearful of China's expanding naval presence in the Indian Ocean, seeing its widening network of naval bases as a noose that could be used to strangle India. They blast Prime Minister Manmohan Singh for alleged weakness in the face of this growing threat. Bharat Verma, editor of the *Indian Defence Review*, predicted in a widely publicized essay this summer that China would attack India sometime before 2012. With social unrest rising within China due to the worldwide economic slump, he says, the leadership in Beijing needs "a small military victory" to unify the nation, and India is "a soft target," due to Singh's fecklessness. In recent weeks India's defense minister and the heads of the Army and Air Force have felt compelled to reassure the public that "there will be no repeat of 1962."

### PP Link 2NC

#### Obama’s presidential power will only increase with executive orders

Zelizer 9 [Julian, professor of history and public affairs at Princeton University's Woodrow Wilson School “Commentary: Can Obama and Congress Share Power?” CNN Online, January 5, http://www.cnn.com/2009/POLITICS/01/05/zelizer.power/index.html]

Obama must be held responsible as well. While presidents don't like to give up power, maybe this president will be different. At a minimum, Obama should avoid the techniques used so often in recent years to circumvent legislative will. It is not enough to reverse Bush's executive orders -- the **crucial** **question** is whether Obama uses such orders as frequently himself. If the nation can create a better balance between the executive and legislative branches, the country will benefit. The New Deal proved when both branches work together, the nation can produce some of its finest and most effective programs.

#### Unilateral executive action expands presidential power

Kenneth Mayer, 2001: [Kenneth Mayer, professor of political science at the University of Wisconsin, “With the Stroke of a Pen.” 2001, pg. 56. ]

Much of the time, analyses of the president’s constitutional power rely on historical evidence of how individual presidents viewed that power and how they put it into practice. Practice matters because of the importance of precedent to the expansion of presidential power, because the parameters of presidential authority have often been shaped by case-by-case judicial review, and because presidents have used their authority (often through executive orders\_) in order to shape institutional patterns and processes that in turn enhance their ability to exercise administrative control. Each time a president relies on executive prerogative to take some type of action, it makes it easier for a future president to take the same (or similar) action. “The boundaries between the three branches of government are…strongly affected of custom or acquiescence. When one branch engages in a certain practice and the other branches acquiesce, the practice gains legitimacy and can fix the meaning of the Constitution.

### Link 2NC

#### Use of executive orders greatly expand presidential power

**Taylor ‘04** (Stuart, Columnist, National Journal, NPR, 5-1, Lexis)

I think there's another countervailing trend that gets a lot less attention but which is pretty important, which is rather quietly presidents, including I think both President Clinton and President Bush, expand presidential power dramatically through their use of executive orders. President Clinton, for example, used his executive order power to bring huge quantities of Western lands under restrictions, federal protection. President Bush used his executive order powers to undo some of that.

#### Each action is critical to presidential power

Neustadt 91 [Richard, professor of Public Administration @ Cornell and Columbia University, *Presidential Power and the Modern Presidents,* pg 102]

If not as the determinant “right now” then as the means of opening alternatives and posting caution signs “next time,” a President’s perception of his power stakes (and sources) in each act of choice conditions every chance to make his saying and his doing serve his influence. What choices are to power, these perceptions are to choice: the means in his own hands. To ask how he can guard his power stakes in acts of choice is thus to ask how clearly he perceives. To ask how he can help himself to power is to ask how he can sharpen his perceptions. The question now becomes what helps him see. The Humphrey story would suggest that nobody and nothing helps a President to see save as he helps himself; that neither issues now advisers as they reach him are a substitute for sensitivity to power on his part. It follows that in answering this question one must look to his resources for self-help. To ask what helps him see is really to inquire what he can do for himself. That follows from this case, but does it always follow? My own response is yes. An incident like Eisenhower’s “go ahead” to Humphrey is distinctly not unique in this regard. What it suggests applies to every case of which I am aware. The indication of them all is that no man who sits where Eisenhower sat can count on reading his own risks upon the face of issues brought before him; none is safe in counting on subordinates to remedy the lack. Outcomes may be happier by far than in this case; the likelihoods are not.

### PP Good – Laundry List

#### Prez power solves India Pakistan, North Korea, Middle East nuclear wars

South China Morning Post 00 [“Position of Weakness” 12-11-00, p. L/N]

A weak president with an unclear mandate is bad news for the rest of the world. For better or worse, the person who rules the United States influences events far beyond the shores of his own country. Both the global economy and international politics will feel the effect of political instability in the US. The first impact will be on American financial markets, which will have a ripple effect on markets and growth across the world. A weakened US presidency will also be felt in global hotspots across the world. The Middle East, the conflict between India and Pakistan, peace on the Korean peninsula, and even the way relations between China and Taiwan play out, will be influenced by the authority the next US president brings to his job. There are those who would welcome a weakening of US global influence. Many Palestinians, for example, feel they would benefit from a less interventionist American policy in the Middle East. Even within the Western alliance, there are those who would probably see opportunities in a weakened US presidency. France, for example, might feel that a less assertive US might force the European Union to be more outward looking. But the dangers of having a weak, insecure US presidency outweigh any benefits that it might bring. US global economic and military power cannot be wished away. A president with a shaky mandate will still command great power and influence, only he will be constrained by his domestic weakness and less certain about how to use his authority. This brings with it the risks of miscalculation and the use of US power in a way that heightens conflict. There are very few conflicts in the world today which can be solved without US influence. The rest of the world needs the United States to use its power deftly and decisively.

### PP Good - Poverty

#### Only a strong president is capable of rallying resources necessary to solve poverty

Deans 2K [Bob, “Will Global Tech Trends Make Presidents Less Important” Cox News Service Jan 23, Lexis]

As President Clinton prepares to deliver the State of the Union address Thursday, officially slipping into the twilight of his time in office, many believe the presidency itself might be on the wane. The White House, some say, perhaps even government itself, is losing its steam as an engine of influence, hopelessly outpaced by the thundering convergence of technology, borderless information flows and the rise of the global marketplace. Yet the U.S. presidency, long regarded as the most powerful institution in the world, arguably has assumed more authority and reach than at any time in its history. While no one can doubt the growing impact of the Internet, Silicon Valley and Wall Street on the daily lives of all Americans, only the president can rally truly global resources around American ideals to further the quest for equality and to combat the timeless ills of poverty and war. It is that unique ability to build and harness a worldwide consensus that is widening the circle of presidential power. ''The presidency will remain as important as it is or will become more important,'' predicted presidential scholar Michael Nelson, professor of political science at Rhodes College in Memphis, Tenn. The voice of all Americans The taproot of presidential power is the Constitution, which designates the chief executive, the only official elected in a national vote, as the sole representative of all the American people. That conferred authority reflects the state of the nation, and it would be hard to argue that any country in history has possessed the military, economic and political preeminence that this country now holds. And yet, the nation's greatest strength as a global power lies in its ability to build an international consensus around values and interests important to most Americans. On Clinton's watch, that ability has been almost constantly on display as he has patched together multinational responses to war in the Balkans, despotism in Haiti, economic crises in Mexico, Russia, Indonesia and South Korea, and natural disasters in Turkey and Venezuela. The institutions for putting together coalition-type action --- the United Nations, the North Atlantic Treaty Organization, the International Monetary Fund, the World Bank and the World Trade Organization among them --- are hardly tools of American policy. But the United States commands a dominant, in some cases decisive, position in each of those institutions. And it is the president, far more than Congress, who determines how the United States wants those institutions to be structured and to perform. ''Congress is a clunky institution of 535 people that can't negotiate as a unit with global corporations or entities,'' said Alan Ehrenhalt, editor of Governing magazine. ''It's the president who is capable of making deals with global institutions.'' It is the president, indeed, who appoints envoys to those institutions, negotiates the treaties that bind them and delivers the public and private counsel that helps guide them, leaving the indelible imprint of American priorities on every major initiative they undertake. ''That means, for example, that we can advance our interests in resolving ethnic conflicts, in helping address the problems of AIDS in Africa, of contributing to the world's economic development, of promoting human rights, '' said Emory University's Robert Pastor, editor of a new book, ''A Century's Journey,'' that elaborates on the theme.

### PP Good – Heg

#### Weak presidents are more dangerous than strong – they risk diversionary warfare, overreaction, and an ineffective incoherent foreign policy

Koh 95[Harold Hongju, Professor of International Law and Director, Orville H. Schell, Jr. Center for International Human Rights, Yale Law School [50 U. Miami L. Rev. 1]

Both precedents have obvious parallels today, not to mention a third possibility: that temptation might draw the executive branch into a "splendid little war" - like Grenada or Panama - with an eye toward a possible presidential bounce in the polls. That possibility raises Maxim Two: that weak presidents are more dangerous than strong ones. Jimmy Carter, for example, in the last two years of his presidency, engaged in perhaps the most dramatic nonwartime exercise of emergency foreign power ever seen, not because he was strong but because he was so politically weak. 43 In foreign policy, weak presidents all too often have something to prove. 44 In a gridlock situation, the president's difficulty exhibiting strength in domestic affairs - where Congress exercises greater oversight and must initiate funding proposals - makes it far easier for him to show leadership in foreign affairs. At the same time, weak presidents may underreact to looming crises that demand strong action, for fear that they cannot muster the legislative support necessary to generate the appropriate response. But when these weak presidents do finally respond, they tend to overreact: either to compensate for their earlier underreaction, or because by that time, the untended problem has escalated into a full-blown crisis, Bosnia and Haiti being the two prime Clinton Administration examples. 45 When private parties bring suits to challenge these presidential policies, courts tend to defer to weak presidents, because they view them not as willful, so much as stuck in a jam, [\*12] lacking other political options. Finally, weak presidents are more prone to give away the store, namely, to undercut their own foreign policy program in order to preserve their domestic agenda. This raises the question of whether this Democratic president may be forced to sign restrictive congressional legislation - or whether Congress might pass such legislation over presidential veto, as Congress did with the War Powers Resolution in 1974 - which may later come back to haunt future presidents. Nor, in this media age, is any president's strength truly secure. These days every president, whatever his current popularity rating, is potentially weak. We sometimes forget that just after the Gulf War, George Bush's popularity rating stood at 91%, only ten months before he lost reelection, and five years before he recanted about his actions during the war itself.

### PP Good – Econ

#### Strong executive powers are critical to restrain federal spending

Calabresi ‘95 (Steven G., Associate Prof, Northwestern U School Law, Arkansas LR, Lexis)

Now imagine a whole Congress of such officeholders, all of whose careers depend in significant part on their abil [\*35] ity to get back more for their small electoral constituency than their constituents pay in. The net result is a collective action problem in which every member of Congress's career depends on an ability to be ever more creative in funnelling federal resources back to their constituencies while imposing the cost in federal taxes, borrowing, or regulation on someone else's constituency or on the nation as a whole. The collective action problem exists because most of the constituencies might be better off with less largesse and lower levels of taxation, borrowing, and regulation. But no member of Congress will dare vote for this absent an effective mechanism of collective enforcement for fear that other members of Congress will cheat and will continue to steer national pork to their local interests. The only official with any incentive under our present electoral structure to stop this game is the President who is (along with the Vice President) our only nationally elected official. 33 Representing as he does a national electoral college majority, the President at least has an incentive to steer national resources toward the 51% of the nation that last supported him (and that might support him again), thereby mitigating the bad distributional incentives faced by members of Congress. In fact, most modern presidents probably see their potential electoral base as comprehending up to 60% of all voters 34 and perhaps as many as 90% of all state electoral college votes. 35 Moreover, elections over the last thirty years suggest that virtually every state in the nation is in fact in play in these contests. Thus, the President is our only constitutional backstop against the redistributive collective action problem described above. [\*36] Now how does this fact bear on the quite different fact that because of a change in circumstances since 1937 the federal government has grown exponentially in wealth and power? Well, in brief, the huge increase in the amount of federal largesse has greatly exacerbated the collective action problem created by the congressional electoral system. It has transformed members of Congress into constituent service agents whose raison d'etre is to recover for their constituencies as much federal largesse as possible, even if the end result is only to set off a race with other members of Congress that ultimately intensifies the growth in the size of the federal pie thereby requiring ever higher levels of constituent service. The only practicable way out of this situation is to **strengthen presidential power** and unitariness. 36 The essential ingredient to combating the congressional collective action problem is the President's national voice, because he, and he alone, speaks for the entire American people.

#### Failure to hold the line on spending ensures deficits destroy the U.S. economy

Ornstein ‘04 (Norman, Resident Scholar / AEI, Roll Call, 7-7, Lexis)

Today’s budget deficit is 4.2 percent of our GDP. That’s a large but not alarming number -a figure that, by itself, could be sustainable indefinitely without deeply damaging the economy. But any realistic projection of the revenue base that we can use to cover these future obligations shows a dismal future - one in which the deficit balloons to almost 16 percent of GDP by 2030, and nearly 29 percent of GDP by 2040. That is not merely unsustainable. It’s downright catastrophic - the equivalent of a suitcase nuclear bomb set off in the middle of our economy. All of this is occurring while we blithely go about cutting the tax base and adding funding for a host of other problems, including homeland security, defense, the environment, education and highways - just to name a few that get overwhelming support from Congress and the American people. Our debate about “fiscal discipline” focuses overwhelmingly on the tiny share of the budget that is in discretionary domestic spending. Cut it all out and we still have staggering obligations and huge future deficits.

### PP Good – Terrorism

#### Sole presidential control of foreign policy is essential to combating terrorism

Lansford and Pauly 3 [Tom, assistant professor of political science, University of Southern Mississippi, Gulf Coast + Robert J. adjunct professor of history and political Science at Norwich University, Northfield, Vermont, and Midlands Technical College “National Security Policy and the Strong Executive” Special Conference Report of American Diplomacy online May 20, <http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec.html>]

Furthermore, American foreign policy is rooted in the notion of the “sole organ theory” which holds that the president is the “sole” source of foreign and security policy.15 This theory has served as the underpinning for the dramatic twentieth-century expansion of executive power. For instance, the Supreme Court decision United States v. Curtiss-Wright Corporation (1936) gave executive agreements the weight of law (and thereby bypassed the senatorial approval required of treaties), while Goldwater v. Carter (1979) confirmed the ability of the president to withdraw from international treaties without congressional consent.16 The result of this concentration of power has been the repeated presidential use of the U.S. military throughout the nation’s history without a formal congressional declaration of war and an increased preference by both the executive and the legislature for such actions.17 One feature of this trend was consistency in U.S. foreign policy, especially during the Cold War era. Even during periods when the United States experienced divided government, with the White House controlled by one political party and all or half of the Congress controlled by the party in opposition, the executive was able to develop and implement foreign and security policy with only limited constraints.18 Given the nature of the terrorist groups that attacked the United States on 11 September 2001, such policy habits proved useful since a formal declaration of war was seen as problematic in terms of the specific identification of the foe and the ability of the Bush administration to expand combat operations beyond Afghanistan to countries such as Iraq.

### A2: PP Bad – Tyranny

#### No tyranny

Posner & Vermeule ’11, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 113-114, jj

The modern executive enjoys vast discretion to govern, yet we are far from “tyranny,” the outcome Madison predicted would result from the accumulation of powers in one office. Even during emergencies and war, when executive power is at a zenith, and congressional and judicial checks at their lowest ebb, tyranny is not the result. This point can be put in a number of ways. Through its long history and all of its wars and crises, the U.S. government has generally been responsive to the public interest, and has always ranked as a leader among countries around the world in protecting civil liberties. Indeed, the national government was instrumental in dismantling slavery and the Jim Crow laws in the southern states, which were the closest thing to tyranny that the United States has ever experienced. Political science indicators of various sorts confirm that, compared to the other countries around the world, the United States is a leader in democratic responsiveness and civil liberties.1 And American practices in these respects have only improved over the decades and centuries, during the same period in which the separation of powers has eroded.¶ In this chapter, we discuss this puzzle. Our argument is simple: the system of elections, the party system, and American political culture constrain the executive far more than do legal rules created by Congress or the courts; and although politics hardly guarantees that the executive will always act in the public interest, politics at least limits the scope for executive abuses. After briefly making these points, we focus on the way that American political culture---which features deeply entrenched suspicion of the executive---forces the executive to adopt institutions and informal mechanisms of self-constraint that help enhance its credibility. These mechanisms are the institutional replacements for Madison’s system of separation of powers.

## Theory

### 2NC A2: Agent CP’s Bad

#### Counter-Interpretation: CP’s that use the executive, courts or congress are legitimate

#### First our offense:

#### Topic education—agent CP’s are a pre-requisite to ocean education—the phrase “federal government” is meaningless, specific agency discussions are the most real world

Smith, 5 (Helen V. Smith, Southeastern Environmental Law Journal, Fall, 2005, 14 Southeastern Envtl. L.J. 133, “A SUMMARY ANALYSIS OF THE U.S. COMMISSION ON OCEAN POLICY'S RECOMMENDATIONS FOR A REVISED FEDERAL OCEAN POLICY, AND THE BUSH ADMINISTRATION'S RESPONSE” Lexis)

Federal ocean governance is mired by a disorganized and redundant regulatory system, which the Pew Oceans Commission n19 has described as a "hodgepodge of individual laws that has grown by accretion over the years, often in response to crisis." n20 Ocean policy is governed by more than 140 statutes and involves more than 60 congressional committees and nearly 20 federal agencies, n21 none of which are joined together within a single department of the federal government. n22 Extensive geographic and jurisdictional divisions pertaining to the regulation of particular regions and resources also complicate comprehensive federal authority. n23

#### 2) Negative ground --- this topic is huge because the verbs “exploration and development” are incredibly broad—agent CP’s are a core neg arg that is key to check small and unpredictable affs.

#### Err neg --- the CP is predictable and has tons of lits on both sides. The aff only needs a congress/courts key warrant to beat this counterplan.

#### Noting a voting issue --- reject the arg not the team.

## Tricks vs K Affs

**XO Solves – Social Change / Framing**

***Even if the intent of the CP is different the plan, executive action spills over to drive social change and shift the frame***

**Mayer & Price, ‘2** [Kenneth R. Mayer is professor of political science at the University of Wisconsin–Madison and author of With the Stroke of a Pen: Executive Orders and Presidential Power (Princeton University Press, 2001). Kevin Price is a graduate student at the University of Wisconsin–Madison. Presidential Studies Quarterly 32, no. 2 ( June), © 2002 Center for the Study of the Presidency, Unilateral Presidential Powers: Significant Executive Orders, 1949-99, online pdf, jj]

**The administrative authority vested in the modern presidency is significant in its own right, but we claim that the exercise of intragovernment powers can yield *consequences for the larger political system as well***. **In a highly permeable system in which executive policy decisions can spill over into other institutions and the broad political culture, executive orders can effect changes *that presidents may or may not have intended*—or even considered— in the first place** (Weir 1989). In other words, **politically significant executive orders are not merely executive phenomena**. **As illustrated by the long history of executive orders concerning integration and civil rights—Truman ordering** the **integration of the armed forces**, **Kennedy and Johnson requiring affirmative action** in federal contracting, Reagan attempting to limit the role of ethnic preferences in federal affirmative action programs—**these instruments of presidential authority can animate contending forces, facilitate innovations in the legislative process, codify ideological commitments, *and drive social change*.**

#### It draws public attention to the issue

**Marshall, 8** --- Professor of Law at the University of North Carolina

(April 2008, William P., Boston University Law Review, “THE ROLE OF THE PRESIDENT IN THE TWENTY-FIRST CENTURY: ARTICLE: ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS,” 88 B.U.L. Rev. 505))

7. The Media and the Presidency

As Justice Jackson recognized in Youngstown, **the power of the Presidency has also been magnified by the nature of media coverage**. This coverage, which focuses on the President as the center of national power, n66 has only increased since Jackson's day as the dominance of television has increasingly identified the image of the nation with the image of the particular President holding office. n67 The effects of this image are substantial. **Because the President is seen as speaking for the nation, *the Presidency is imbued with a unique credibility*. The President thereby holds an *immediate and substantial advantage in any political confrontation*.** n68 Additionally, **unlike the Congress or the Court, *the President is uniquely able to demand the attention of the media* and, in that way, can influence the Nation's political agenda to an extent that no other individual, or institution, can even approximate.**

#### Sets the national agenda

**Peake & Eshbaugh-Soha, ‘8** [Jeffrey S. Peake is Associate Professor, Department of Political Science, Bowling Green State University. Matthew Eshbaugh-Soha is Assistant Professor, Department of Political Science, University of North Texas. Political Communication, 25:113–137, 2008 Copyright © Taylor & Francis Group, LLC ISSN: 1058-4609 print / 1091-7675 online DOI: 10.1080/10584600701641490, The Agenda-Setting Impact of Major Presidential TV Addresses, online pdf, jj]

**Agenda setting, or the influence over the attention given policy issues by other institutions, is perhaps the most important source of presidential power**. ***By setting the agenda, presidents can influence the priorities of government, the media, and the American people***. Conventional wisdom holds that **presidents are effective agenda-setters, who influence the salience of issues** (Baumgartner & Jones, 1993; Kingdon, 1984). **Presidents**, the argument goes, **are uniquely situated to affect the national agenda, including what Congress addresses** (Edwards & Barrett, 2000; Neustadt, 1960) **and the issues considered important by the American public** (Cohen, 1995, 1997). Recent research, however, has challenged the claim that presidents set agendas so readily, at least through their public speeches (Edwards, 2003; Edwards & Wood, 1999; Wood & Peake, 1998; Young & Perkins, 2005). Given its importance as a linkage institution between presidents and the public and its role in influencing that national policy agenda, it is a natural extension of presidential agenda-setting research to focus on the relationship between the press and presidency. Do presidents regularly influence what American media cover? Or, are the media driven by other motives that lead them to resist presidential efforts to affect their coverage?

## Uniqueness

### Ocean XOs Now

#### BIGGEST OCEANS XO COMING, CP IS IMPERCEPTIBLE

Laura Barron-Lopez (staff) 6/17/2014

[“Obama to declare more of the Pacific off-limits” online @ <http://thehill.com/policy/energy-environment/209609-obama-pledges-action-to-protect-ocean>, loghry]

President Obama on Monday announced he plans to close off a large swath of the Pacific Ocean from fishing and energy exploration.¶ The executive action is the biggest move yet by Obama to protect the oceans, and drew criticism from Republicans who say Obama is overreaching with his moves to create new nature preserves and national monuments.¶ The president will declare more of the Pacific Remote Islands Marine National Monument in the south-central Pacific Ocean off-limits, according to a White House fact sheet.

#### NO RISK OF BACKLASH OR CONSTITUTIONALITY ISSUES – MASSIVE OCEAN XO ISSUED IN 2013

Doc Hastings (rep, r-washington) January 2013 [“National Ocean Policy Creates More Red Tape, Hurts Economy” Sea Technology 54.1 (January 2013): 40, online @ <http://sea-technology.com/features/2013/0113/national_ocean_policy.php>, loghry]

President Obama enacted the National Ocean Policy by issuing an executive order, meaning this drastic change in ocean management was done without Congressional authorization. To date, no bill has passed the U.S. House of Representatives to implement similar far-reaching ocean policies. The executive order creates a web of bureaucracy that includes dozens of new policies, councils, committees, planning bodies, priority objectives, action plans, national goals and guiding principles. Rather than streamline federal management, the president's initiative will instead add layers of new red tape and create a top-down approach. For example, federally-controlled regional planning bodies will be tasked with creating zoning plans for each region without input or representation from local stakeholders or affected industries. All relevant federal agencies, states and regulated communities will be bound by the plans, which will be used to make decisions on regional permitting activities.

## A2: DA’s to the CP

### A2: Interbranch Conflict

***Interbranch Conflict now, Libya Proves***

**Sullivan**, Cheryl 06-18-20**11** (“Libya conflict: Backlash ensues to Obama's refusal to seek Congress's nod” <http://www.csmonitor.com/USA/Politics/2011/0618/Libya-conflict-Backlash-ensues-to-Obama-s-refusal-to-seek-Congress-s-nod>)

Obama says US military intervention in Libya does not require consent from Congress. Many lawmakers and pundits say otherwise.The [Obama administration](http://www.csmonitor.com/tags/topic/Barack+Obama) is increasingly isolated at home over its handling of the [Libya](http://www.csmonitor.com/tags/topic/Libya) conflict – mainly over its refusal to seek Congress’s consent for continued [US military](http://www.csmonitor.com/tags/topic/U.S.+Armed+Forces) operations against the Qaddafi regime, but also over the US role in the Libya campaign in the first place.Skip to next paragraph From [Democrats](http://www.csmonitor.com/tags/topic/U.S.+Democratic+Party) to [Republicans](http://www.csmonitor.com/tags/topic/U.S.+Republican+Party), from [Fox News](http://www.csmonitor.com/tags/topic/FOX+News+Network+LLC) commentators to the [Washington Post](http://www.csmonitor.com/tags/topic/The+Washington+Post+Company), criticism – even guffawing – resounded over the administration’s reasoning that US activities do not rise to the level of “hostilities.” No words are minced in the excerpts below. “An honest appraisal of the activities that the [United States](http://www.csmonitor.com/tags/topic/United+States) continues to engage in would put the administration squarely within the purview of the War Powers Resolution,” the Washington Post editorial board [opined Thursday](http://www.washingtonpost.com/opinions/the-action-in-libya-looks-like-war-to-us/2011/06/16/AGrJmYZH_story.html), noting continuing US airstrikes, use of [Predator drones](http://www.csmonitor.com/tags/topic/MQ-1+Predator), and logistical and intelligence support. “It is absurd to say that US forces are engaged in Libya for purely humanitarian missions,” wrote Fox News contributor and former [State Department](http://www.csmonitor.com/tags/topic/U.S.+Department+of+State) adviser [Christian Whiton](http://www.foxnews.com/opinion/2011/06/17/what-congress-needs-to-tell-obama-about-his-libya-policy/), on Friday. “Were this true, we would not be striking [Tripoli](http://www.csmonitor.com/tags/topic/Tripoli) directly, including repeated strikes on Qaddafi’s headquarters.” And from [House Speaker John Boehner](http://www.csmonitor.com/tags/topic/John+Boehner) on Friday: “The White House’s suggestion that there are no ‘hostilities’ taking place in Libya defies rational thought.”That doesn’t mean the War Powers Resolution itself is universally acclaimed. The sources cited above all dislike it at some level, and many legal experts suggest its check on presidential power to command the armed forces would not stand up in court. Previous presidents have circumvented or ignored it.But Boehner, sensing that the administration's position is being greeted with either skepticism or ridicule, sought to seize the moral and political high ground. “Despite the constitutional concerns anyone may have with the statute, the War Powers Resolution is the law of the land and cannot simply be ignored,” he said Friday.Boehner has suggested that the Republican-led House may invoke the power of the purse and find ways to defund military operations in Libya. Antiwar [Rep. Dennis Kucinich (D)](http://www.csmonitor.com/tags/topic/Dennis+Kucinich) of [Ohio](http://www.csmonitor.com/tags/topic/Ohio) said he will introduce just such a measure as part of a defense spending bill. (Or perhaps Boehner and President Obama will devise a less confrontational solution while playing golf together on Saturday.)[Skip to next paragraph](http://www.csmonitor.com/USA/Politics/2011/0618/Libya-conflict-Backlash-ensues-to-Obama-s-refusal-to-seek-Congress-s-nod/(page)/2#nextParagraph) Moreover, 10 House members (Democrats and Republicans among them) sued in federal court this week, charging that the executive branch is violating the Constitution and the War Powers Resolution by not seeking congressional approval to continue US military actions, which are part of a [NATO](http://www.csmonitor.com/tags/topic/NATO)-led campaign.On the Senate side, where there is a bit less restlessness over Libya, [Sens. John McCain](http://www.csmonitor.com/tags/topic/John+McCain) (R) of [Arizona](http://www.csmonitor.com/tags/topic/Arizona) and [John Kerry](http://www.csmonitor.com/tags/topic/John+Kerry) (D) of [Massachusetts](http://www.csmonitor.com/tags/topic/Massachusetts) are expected to put forward a resolution in support of US intervention. Both senators back a continued US role in the Libya campaign, which as originally crafted in March was intended to prevent Libya’s [Muammar Qaddafi](http://www.csmonitor.com/tags/topic/Moammar+Gadhafi) from slaughtering rebels and protesters who were rising up against his regime.The Obama administration would “welcome and support” such a resolution, said White House spokesman [Jay Carney](http://www.csmonitor.com/tags/topic/Jay+Carney) on Friday, even as he insisted that such backing is not required because the War Powers Resolution “does not apply.”Notably, [Sen. Richard Durbin (D)](http://www.csmonitor.com/tags/topic/Dick+Durbin) of [Illinois](http://www.csmonitor.com/tags/topic/Illinois), the No. 2 Democrat in the Senate and a longtime ally of Mr. Obama, broke with the president over the “hostilities” matter. He, too, supports US intervention, but he says Congress should authorize it. He plans to submit a resolution that would include some limitations: No ground troops could be used in Libya, and the seal of approval would be good only through the end of the year.It’s hard to say how Congress would vote on Libya, if it ever comes to that. Most lawmakers are upset at what they perceive to be a White House snub of Congress. Some are antiwar or isolationist, saying there’s no compelling US interest for continued intervention there. Still others are budget hawks, noting the estimated $1.1 billion price tag if the Libya campaign lasts through Sept. 27 – which is how long the Obama administration has committed to stay. Perhaps the vote would be close enough that White House would rather not test it.

***Unitary Executive theory key to Separation of Power***

**Calabresi, 95** [Calabresi - Associate Professor at Northwestern University School of Law. “Some Normative Arguments for the Unitary Executive” 48 Ark. L. Rev. 23]

**The goal, of course, is to ensure that “ambition [will] be made to counteract ambition**.” N61 This is accomplished in two ways. **First, it is necessary to ensure that each department will have a will of its own.** This can be **done** in part **by creating separate electoral channels for each of the three departments back** to the ultimate “fountain of authority, the people…”n62 **Second, it is necessary to guarantee that “those who administer each department,” will have “the necessary constitutional powers of those offices and the “provision for defence must in this, as in all other [\*46] cases, be made commensurate to the danger of attack.”** N64 **This** in turn, **leads necessarily to the idea of a unitary executive.** The reason for this is because “it is not possible to give to each department an equal power of self defense” as “in republican government the legislative, necessarily, predominate.” N65 Madison explained that “the remedy for this inconveniency is, to divide the legislature into different branches: and to render them by different modes of election, and different principles of action, as little connected with each other as the nature of their common function; and their common dependence on the society, will admit.” N66 **But just as key to Madison as the weakening of the legislature was the concomitant strengthening of the executive. Thus, he stated that “ as the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand that it should be fortified.”**

***Inter branch conflict is a non-unique impact and the last century shows it always balances out and constantly swings like a pendulum***

**Rottinghaus,** Assistant Professor (Political Science) and Director of Bureau of Public Affairs Research, University of Idaho. **2006** [Brandon, “Putting the 2006 Bellwood Lecture in Context: Reflections on Executive-Legislative Power Sharing in Modern Foreign Policy Making,” 43 Idaho L. Rev. 1 lexis]

In particular, **three historical peaks in the 20th Century characterize the ebb and flow of the dynamic relationship**, including the "isolationists" in the aftermath of World War I, n15 the "revisionists" during the height of the Cold War and the "new internationalists" during the Vietnam War. **The "isolationists" in Congress were powerful (and savvy) enough to block** Woodrow **Wilson's** **proposed League of Nations and force the administration to withdraw troops from** revolutionary **Russia**. n16 During the beginnings of the Cold War, congressional power was again enlarged, with congressional "revisionists" as "players on virtually every key issue of the day, in a bipartisan foreign policy where formal and informal powers seamlessly intersected." n17 Because of strong sentiments from the Republican leadership (and a relatively ineffectual Democratic leadership), several factions of the Republican [\*4] Party were permitted to continue their ideological goals to limit the spread of Communism, both at home and abroad. Riding in the wake of the "imperial presidency," **Congress again reasserted its power in the mid-1970s**. n19 **The "new internationalists**," who had coalesced years earlier as critics of foreign aid policies that supported anti-Communist regimes in the 1960s, **challenged presidential supremacy during the Vietnam War**. n20 Stalwart Senators, including Stuart Symington, Edward Kennedy, John Tunney, Dick Clark, Frank Church and members of the "Watergate class of 1974," led the charge with legislation limiting covert assistance, convening hearings on human rights abuses and cutting off aid to governments deemed reckless with power. n21 These idealistic changes prompted many to argue for more transparency in national security affairs and the justification of American international actions to the public, culminating in the War Powers Act of 1974 n22 that ostensibly limited formal presidential war-making power. n23 The most dramatic of these post-Watergate moments, and central for purposes of reflection in the 2006 Bellwood Lecture, was **Senator** Frank **Church's investigation of the United States' intelligence community** (including the FBI, CIA and other intelligence agencies) from 1975 to 1976 through the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activity. The "Church Committee" (as it came to be known) **investigated some of the many abuses of the United States during this time, including assassination plots against foreign leaders and the overthrow of democratically elected governments in Latin America**. n24 **Out of these proceedings emerged significant legislation restricting presidential power in covert operations by requiring court-granted warrants for international surveillance** (called the Foreign Intelligence Surveillance Act). n25 The Ford White House largely viewed the Committee as resultant from the [\*5] power shift during Watergate, suggesting emerging political energy (even if temporary) in the legislative branch on foreign policy. n26 As is clear from these examples, this power-sharing relationship is not static. And, as we have seen in the past, **this dynamic relationship bends and reforms as function of the political will expended by the political actors involved and as international events unfold. Even as this preface goes to press, the pendulum of power-sharing continues to sway back and forth on contemporary issues, primarily the "war on terror."** In advance of the 2006 elections, the White House and Congress, after key congressional Republicans questioned the White House's blanket authority to detain prisoners, negotiated a compromise on rules for trials for "enemy combatants." Under new rules, detainees have some expanded rights to fair trials where the President is able to establish military tribunals without potential review from federal courts. n27 In addition, while these legislative determinations give the executive more power to classify military detainees**, the Congress**, even members of the President's party, **have been periodically willing to challenge this executive authority. Senator Specter went so far as to initiate Judiciary Committee hearings to investigate President Bush's use of signing statements to interpret laws or statutes as he signs them into law,** particularly on the President's ability to interpret Article 3(regarding "cruel treatment and torture") of the Geneva Convention.

***Inter branch conflict is inevitable and cyclical***

**Rottinghaus,** Assistant Professor (Political Science) and Director of Bureau of Public Affairs Research, University of Idaho**. 2006** [Brandon, “Putting the 2006 Bellwood Lecture in Context: Reflections on Executive-Legislative Power Sharing in Modern Foreign Policy Making,” 43 Idaho L. Rev. 1 lexis]

**The events of September 11**, 2001 ushered in a complex reorganization of the nation (and perhaps the world) but **were an understandable part of a long and incessant struggle in the balance of power in American government between the legislative and executive branches.** Indeed, dramatic national events that seek out a national leader tend to allow for a tuning of the thorny relationship between the two lawmaking branches of government. Interestingly, **we have witnessed this pattern of inter-branch tension in similar past dramatic events: the Civil War, the Great Depression, and Pearl Harbor (and now 9/11). All have pushed the pressure points of political power.** However, because of Constitutional design, political energy among these American political institutions cannot be destroyed-only displaced. In truth**, one branch can only absorb so much of this energy before the other branches demand redistribution of these important shared powers. Concerns over these inter-branch tensions are not new and distinct patterns emerge governing how the relationship evolves over time; scholars for generations have labored to describe the complicated and tenuous relationship between the executive and legislative branches**. Woodrow Wilson, the most famous scholar and practitioner of the science, suggested in Congressional Government that Congress was ill-equipped to legislate and the president must have a more significant and formal role. n1 Corwin's prescient description of the separated powers as an invitation to struggle, framed scholars' thinking about the Constitutional interaction between the presidency and Congress. n2 Neustadt's concept of the president and the legislature as "separated institutions sharing powers" intellectually echoed Corwin's [\*2] finding. n3 He argued separated but shared powers sets the stage for "that great game" where both sides must lobby and bargain with each other "much like collective bargaining, in which each seeks to profit from the other's needs and fears."

**Separation of Powers Disad Answers**

**Non-Unique – SOP Low**

***Because of the bailout, violations of separation of powers are high***

**Bader 9**

(Hans, Competitive Enterprise Institute, “Illegal Chrysler takeover: Pension funds' standing in Indiana State Police Pension Trust v. Chrysler”, Examiner 6/8 http://www.examiner.com/x-7812-DC-SCOTUS-Examiner~y2009m6d8-Illegal-Chrysler-takeover-Pension-funds-standing-in-Indiana-State-Police-Pension-Trust-v-Chrysler)

The **Obama and Bush Administrations used money** from the $700 billion financial system bailout **for an auto industry bailout**. To do that, they have seized on the fact that the bailout statute contains **a broad definition of “financial institution,” which the Administration claims includes virtually any institution**, financial or not. The bailout statute defines “financial institutions” eligible for the bailout as “including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company.” Never mind that Congress listed as examples of “financial institutions” only entities that were banks, insurance companies, or financial institutions, not automakers. (Congress rejected auto bailout legislation last year precisely because it lacked safeguards against the use of bailout money to prop up uncompetitively high UAW wages — exactly what the Obama Administration is using the money for now. During the debate over the auto bailout legislation, the Treasury Department admitted that automakers are not financial institutions covered by the bank bailout statute). Legal scholars at the Heritage Foundation, former Labor Secretary Robert Reich and many other commentators have argued that using the money for auto bailouts violates the financial bailout statute under the principle of statutory construction known as ejusdem generis, which says that when a term’s definition includes examples that are all of a similar kind, it limits the meaning of the term to things similar in kind to such examples. But if that’s not so, and **the bailout was just a** big slush **fund for the Administration to dispense with as it chooses**, then the bailout law itself was unconstitutional, since **it conferred unbridled discretion in the hands of the President to do whatever he wanted with it. The Supreme Court ruled** in the Schechter Poultry case **that giving the executive uncabined discretion violates the constitutional separation of powers between different branches of government, by giving the president essentially legislative powers**. (An earlier version of the bailout law was even more clearly a violation of separation of powers, since it failed to provide for judicial review of the vast discretion it gave the president, unlike past delegations of power upheld in cases like the Amalgamated Meat Cutters case). The government’s incredibly broad reading of the bank bailout statute should be rejected, since it violates the canon of constitutional doubt

***After the Bush administration separation of powers violations are high***

**Hansen and Chemnick 08**

(Brian, Managing Editor, Jean, Staff Writer, “Bush defies Democrat-authored ban on US control of Iraq oil resources” Inside Energy with Federal Lands 10/20 p. 13, lexis)

President **Bush asserted** last week that **he will not comply with a provision in a defense-policy bill** that prohibits the US from controlling Iraq's oil resources. **Bush made the claim** Tuesday **in a** so-called "signing **statement" he issued after affixing his signature to the fiscal 2009 Defense Authorization Act**, which sets policy for the Defense Department and parts of the Energy Department. The one-sentence provision, which is buried deep inside the 900-page defense bill, bars the US from spending federal funds "to exercise United States control of the oil resources of Iraq." But Bush said **the provision "could inhibit the president's ability to carry out his constitutional obligations** to take care that the laws be faithfully executed, to protect national security, to conduct diplomatic negotiations, to supervise the executive branch, to appoint officers of the United States, and to execute his authority as Commander in Chief." Bush said he would view the provision "in a manner consistent with the constitutional authority and obligations of the president." **The provision was added to the bill by** Democratic **lawmakers**, who have been trying to end the Iraq war since they took control of the Senate and the House in the 2006 election. Some Democrats have argued that the Bush administration's real, unstated reason for invading Iraq in 2003 was to gain control over the country's oil resources.The White House has repeatedly denied that claim. Still, each of the defense authorization bills that the Democratic-controlled Congress has passed since 2006 has explicitly barred the US from exercising control over Iraq's oil resources. Democrats have also inserted language in the bills prohibiting the US from establishing permanent military bases in Iraq.Tony Fratto, a White House spokesman, said the signing statement that Bush issued this week is similar to the objections that he raised when Democrats inserted the oil-related provision in last year's defense authorization bill."There may be exigent circumstances that arise in the war in which it is necessary for US and coalition forces to take over an oil resource for a limited period of time," Fratto told Platts in an e-mail. "The provision, in other words, could interfere with military operations and thus the president's commander-in-chief power."In his signing statement, Bush also said he would ignore a provision of the defense law that creates a "director of operational energy plans" at the Defense Department. According to the provision, the official would be responsible for establishing an "operational energy strategy" for the Army, the Navy and other branches of the US armed forces.The post could be significant, because Congress last year passed a bill that requires the US armed services to use wind, solar and other renewable forms of energy to meet at least 25% of their electricity needs by 2025. That bill, though, allowed the defense secretary to waive the 25% renewable-electricity requirement if he believes it is in the "best interests" of DOD to do so.Fratto said **Bush objected to the provision because it calls for the president to appoint the Pentagon energy adviser "without regard to political affiliation." That could interfere with the president's constitutional powers**, which allow the president to appoint members of his own political party to key federal posts, Fratto said.**Bush has drawn fire from lawmakers and advocacy groups for his frequent use of signing statements**. In 2006, for example, a task force formed by the **American Bar Association called Bush's actions "contrary to the rule of law and our constitutional system of separation of powers**."

***Separation of Powers is low because of presidential intervention***

**Boston Globe 07**

(Editorial, “Investigating back-door vetoes” 2/11, http://www.boston.com/news/globe/editorial\_opinion/editorials/articles/2007/02/11/investigating\_back\_door\_vetoes/

More than **200 years of US history have borne out the good sense of the Founding Fathers who divvied up power between Congress and the president**. Congress passes a bill; the president either signs it or vetoes it. If Congress still feels strongly about a rejected bill, it can override the veto with two-thirds majorities in both houses. President Bush Enhanced Coverage Linking President **Bush has upset that balance by using signing statements**, which are **not subject to an override, to ignore laws he disapproves of but signs**. The chairman of the House Judiciary Committee, John Conyers, has begun an overdue investigation of any cases in which Bush has relied on signing statements to violate laws. The most notorious instance of Bush crossing his fingers behind his back came in 2005 when Congress passed Senator John McCain's antitorture bill. Rather than incur the public relations black eye of rejecting the bill of a war hero and former prisoner of war, he quietly added a statement saying he would not be bound by it. He also used signing statements to exempt his administration from affirmative action hiring requirements and oversight provisions in the antiterror Patriot Act. **He contested Congress's right to require that the director of the Federal Emergency Management Agency have qualifications** for the job. According to Christopher Kelley, a political science professor at Miami University in Ohio, Bush has used signing statements to claim exemptions from 1,149 laws in 150 bills. All of his predecessors combined used such statements to challenge about 600 laws. The best evidence that Bush is using these statements instead of running the risk of seeing vetoes overridden is that he also stands out for the infrequency of his vetoes: just one in six years. That was to reject a bill loosening restrictions on federally supported research on embryonic stem cells. Congress failed to override the veto. At a recent hearing, the president of the American Bar Association, Karen Mathis, called **Bush's frequent use of signing statements "contrary to the rule of law and our constitutional system of separation of powers**." Conyers' committee is hiring a special team of about six lawyers to oversee and investigate the administration's adherence to laws Congress has passed

**SOP – Resilient**

***Separation of power has become resilient because of accommodation***

**Handler 00**

(Alan B., Associate Justice - New Jersey Supreme Court “Principled Decisions”, Rutgers Law Review, Summer, Rutgers L. Rev. 1039)

The **constitutional rules that govern the interaction of the governmental branches of government are subsumed under the separation-of-powers doctrine**. n168 **This doctrine is** usually **formulated**, almost as a set of Marquis de Queensbury rules, **to assume that each branch of government will be able to exercise only its own distinctive constitutional powers without interference** or inhibition from the other branches and to assure a fair fight when the branches are in conflict over the exercise of their respective constitutional powers. n169 **Our court**, understanding that the branches are constantly vying in the exercise of governmental authority, pushing and shoving against one another when they find themselves together in the public policy ring, has attempted to **identify a more resilient essence of the separation-of-powers doctrine, one that has stressed the principles of accommodation** that must be applied if the constitutional scheme of shared governmental powers is to succeed and government is to function effectively in the public interest. Separation-of-powers conflicts invariably and inevitably involve important matters of public policy and broad social issues, which, as noted, are inherently legislative in character and, when used by courts, invoke only discretion and cannot be determined by controlling legal authority. The question to be addressed, however, is how responsibility for sharing social policy [\*1063] should be managed.

***Tyranny from SOP is overstated***

**Mayer 01**

(Kenneth R., Professor of the Department of Political Science - University of Wisconsin-Madison, “Executive Orders and Presidential Power”, pg. 219-220)

Congressional Republicans strenuously objected to what they saw as Clinton's excessive use of executive orders to circumvent to legislative process. It is, however, hard to take many of the claims seriously, and most were motivated more by the substance of what Clinton was doing than by any sincere concerns over the legitimate scope of presidential authority (Representative Chenoweth's fuming over the American Heritage Rivers Initiative as a violation of limited government did not impede her efforts to declare a national day of day of "prayer, fasting and humiliation before God," a bill that left civil libertarians and First Amendment proponents aghast). **The dire warning of impending dictatorship through executive orders are overstated, and they serve not only to exaggerate the nature of the president's authority but also to divert attention from more serious issues involving government accountability and the development of unwarranted federal government power. Concerns about presidential power are functionally tied to concerns about government power** **since**, as I have tried to show, **the expansion in the president's executive authority corresponds to the rise of the modern administrative state**.

***No reason for tyranny – the system is too resilient***

**Posner and Vermuele 2**

(Eric, Professor of Law - University of Chicago, and Adrian, Professor of Law - University of Chicago, “Interring the Nondelegation Doctrine”, U. Chi. L. Rev. 1721)

(1) **It won't happen**. **Despite** the breadth in the modern era of **congressional grants of** statutory **authority to the executive**, a dominant fact of modern government is that Congress and the president are institutional rivals along many dimensions. **Distrust of executive** agents frequently **causes Congress to attempt to control the** smallest **details of executive action**, as it did in the hyper-detailed environmental legislation of the 1960s and 1970s. n84 No serious person compares Roosevelt to Hitler. (2) If it did happen, **it might not be bad**. The **legislatures** of many liberal democracies around the world **have granted the executive broad rulemaking powers**, of varying scope, duration, and legal effect. n85 **Sometimes**, of course, **these practices** or episodes **represent executive usurpation** of legislative authority. **Sometimes they represent** a sensible **social response** to some crisis--war, economic chaos, or social unrest--best resolved by executive processes. **Sometimes**, less dramatically, they represent **a reasonable judgment by the legislature that the opportunity costs of controlling policy formulation are too high**, in light of other things legislatures want to do. Eve**n if Congress granted the president broader rulemaking powers** than it already has--thereby sliding the rest of the way to the bottom of the slope--**there is little reason to suppose**, ex ante, that **the grant would represent legislative abdication to an engorged presidency, rather than a desirable response** to contemporary social needs. Much more could be said about this essentially empirical and predictive question; Part II amplifies the good reasons supporting delegation to executive agents. Suffice it to say here that the **current literature in comparative politics finds that executive usurpation or legislative abdication is rarely the best explanation for broad legislative grants of authority** to the executive. n86 (3) If it did happen, and it were bad, the nondelegation doctrine couldn't prevent it anyway. If an Adolf Hitler came within striking distance of attaining power in the modern United States, it would presumably be unwise to rely on the nondelegation doctrine, or any other [\*1743] esoteric legal principle, as the final barrier. Far better to rely on a countervailing power with real muscle, like an opposing political party or the army. Note that the Schechter Poultry decision is not a plausible example of the Supreme Court invoking the nondelegation doctrine to save the nation from a slide into executive tyranny. The National Industrial Recovery Act had already lost political support by the time the Court heard the nondelegation challenge; **the Court's decision to invalidate the statute amounted to little more than piling on**. There's little reason to think that the Court would ever enforce the doctrine against a nationwide majority convinced that a broad grant of statutory authority to the executive was necessary to national survival. (4) In general, **developing rules with a view to improbable political scenarios is poor constitutional design**. No engineer builds a house capable of resisting a meteor strike; the house would be a bunker unusable for its primary purpose. Tailoring constitutional rules to the improbable case, rather than the usual case, has the same defects. Constitutional law should instead be tailored to the run of cases that might occur under plausible political circumstances; n87 to tailor it to the most lurid and feverish of hypotheticals is to distort its function. **On both methodological and political grounds, there's no reason to fear a slide down the slippery slope, and no reason to twist the constitutional structure out of shape merely to provide against an unlikely political disaster**.

**A2: SOP Impact**

***Separation of Powers is an outdated concepts***

**Freeley ‘00** (Malcolm, Claire Sanders Clements Dean's Chair Professor of Law Office at Berkeley, “Judicial policy making and the modern state: how the courts reformed America’s prisons”, Introduction, p. 1-20)

This book’s hypothesis is that **the reason judges were willing to engage in policy making**, **and apparently to violate the long-standing principles of federalism, separation of powers, and the rule of law, is that there is some-thing seriously wrong with all three principle.** Both the structure prin-ciples – **federalism and the separation of powers – are products of the eighteenth century and are now outdated or in need of significant refor-mulation**. Federalism was a pragmatic solution to the prevailing political situation at the time the Constitution was drafted, while separation of powers was part of the Framers’ intellectual background, derived from Montesquieu’s misinterpretation of comtemporary British politics. The entirety of **the original Constitution is the product of eighteenth-century thought, of course, but federalism and separation of powers, unlike free speech, just compensation, or checks and balances may be showing their age in more serious ways.** The growth of the administrative state has de-manded, or produced a massive growth in the scope of federal regulation, while spawning a plethora of executive and independent agencies that do not fit within Montesquieu’s tripartite structure. Protecting television pro-grams, as well as books and newspapers, from governmental censorship, or compensating property owners for factories as well as farms requires a centralized, bureaucratic **nation such as ours unless they are extensively reconceptualized. Clearly, the Framers had nothing even vaguely resem-bling our current government in mind when they ensconced these prin-ciples in the Constitution.**

**Rule of Law Disad Answers**

**A2: Rule of Law Impact**

***Turn: Controversy causes better forms of Rule of Law- the status quo is horribly oppressive***

**Henderson, 91**

(Lynne, Law professor of Indiana University School of Law, Indiana Law Journal Vol. 66.379 p.384-4)

Because law is a major tool of social and political power, and because it is the primary instrument for a government to legitimate itself and accomplish its objectives, law is vulnerable to “capture” for substantively authoritarian purposes. Law may always be authoritarian in the formal sense, because a major premise of law is that people will accept and obey it absent some extraordinary justification. Yet, a jurisprudential preoccupation with the duty to obey law and the the authority of law overlook law's tendency to validate and facilitate oppression and violence, whether by the state directly or by private actors with tacit state approval. Judges may participate in authoritarian uses of law by unquestioning obedience to “rule” and other authorities, by using stereotypical reasoning, by upholding the status quo and hypostatizing power relationships, and by taking a punishing attitude towards disobedience. As Robert cover noted and David Luban recently argued, the Supreme court, in the case of Walker v. City of Birmingham, engaged in authoritarian decisionmaking by holding that civil rights marchers could be punished for disobeying an injunction the Court had declared unconstitutional. Professor Luban concluded that the court in Walker, “[f]acing a choice between the anti-authoritarian consequences of liberal constitutionalism and the overwhelming desire to maintain reverence for authority, . . . opted for the latter.”

**A2: Rule of Law – Econ**

***Rule of law does not affect economic growth***

**Economist 8**

["Order in the jungle - Economics and the rule of law" 3-15, Lexis]

Consistent with that rather gloomy finding, some new **research finds only a weak link between the rule of law and economic growth. The connection with wealth is well established** (see chart again) **but that is different: it has been forged over decades, even centuries. The link with shorter-term growth is harder to see. China appears to be a standing contradiction to the argument that the rule of law is needed for growth. It is growing fast and is the world's largest recipient of foreign investment, yet has lots of corruption and nothing that most Westerners would recognise as a rule-of-law tradition**. (It does, though, guarantee some property rights and its government is good at formulating and implementing policies.)

**A2: Rule of Law – Democracy**

***Rule of law is not crucial to an effective democracy***

**Carothers 3** vice president for studies at the Carnegie Endowment for International Peace, founder and director of the Democracy and Rule of Law Program, former attorney-adviser in the Office of the Legal Adviser of the U.S. Department of State

[Thomas, "PROMOTING THE RULE OF LAW ABROAD The Problem of Knowledge," January, http://www.carnegieendowment.org/files/wp34.pdf]

Things are similarly murky on the political side of the core rationale. Unquestionably t**he rule of law is intimately connected with liberal democracy**. A foundation of civil and political rights rooted in a functioning legal system is crucial to democracy. **But again, the idea that specific improvements in the rule of law are necessary to achieve democracy is dangerously simplistic**. **Democracy** often, in fact **usually, co-exists with substantial shortcomings in the rule of law. In quite a few countries that are considered well-established Western democracies**—and that hold themselves out to developing and post-communist countries as examples of the sorts of political systems that those countries should emulate—**one finds various shortcomings**: (1) **court systems that are substantially overrun** with cases **to the point where justice is delayed on a regular basis**; (2) **substantial groups of people, usually minorities, are discriminated against and unable to find adequate remedies within the civil legal system**; (3) **the criminal law system chronically mistreats selected groups of people**, again, usually minorities; **and** (4) **top politicians often manage to abuse the law with impunity, and political corruption is common**. Of course one can interpret this to mean that because of the deficiencies in the rule of law these countries are imperfect democracies. is is true enough, but the point is that they are widely accepted in the international community as established democracies. Yet their aid agencies are telling officials in the developing and post-communist world that well-functioning rule of law is a kind of tripwire for democracy. **It would be much more accurate to say that the rule of law and democracy are closely intertwined but that major shortcomings in the rule of law often exist within** reasonably **democratic** political **systems**. **Countries struggling to become democratic do not face a** dramatic **choice of “no rule of law, no democracy” but rather a series of smaller**, more complicated **choices** **about what elements of their legal systems they wish to try to improve** with the expectation of achieving what political benefits.

# Aff Answers

## 2AC

### 2AC

#### Perm do both – shields the link to politics/elections

#### Perm do the counterplan – justified because agent CPs are a voting issue --- moots the 1ac which destroys aff ground – causes stale process debates and distracts from topic education – reject the team

#### No solvency—XOs on ocean policy fail and get rolled back—the permutation is key to access durable solvency

Craig, 8 (Robin Kundis Craig\*, \* Attorneys' Title Insurance Professor of Law, Florida State University College of Law, Tallahassee, FL, Stanford Environmental Law Journal, January, 2008, 27 Stan. Envtl. L.J. 3, “ARTICLE: Coral Reefs, Fishing, and Tourism: Tensions in U.S. Ocean Law and Policy Reform” Lexis, jj)

United States Presidents have long protected coral reefs through the use of executive orders. Executive orders are a very weak form of law. Essentially, they are directives from the President to the federal executive agencies, and subsequent Presidents are free to eliminate or change these orders at will. n114 However, executive orders can inspire the United States Congress to enact more permanent legal protections.

The NWHI provide an example of a coral reef ecosystem that has benefited repeatedly from this interplay between the President [\*21] and Congress. In 1903 and 1909, President Theodore Roosevelt first protected the NWHI as bird habitat. n115 Building on those protections, in 1940 President Franklin D. Roosevelt renamed the Reserve as the Hawaiian Islands National Wildlife Refuge. n116

The designation of the NWHI Coral Reef Ecosystem Reserve came about through a blending of congressional and presidential action. In November 2000, Congress authorized President Clinton, in consultation with the Governor of Hawaii, to "designate any Northwestern Hawaiian Islands coral reef or coral reef ecosystem as a coral reef reserve to be managed by the Secretary of Commerce ... ." n117 President Clinton exercised this authority in December 2000, n118 establishing the NWHI Coral Reef Ecosystem Reserve, which set aside an area that protected seventy percent of United States coral reefs. n119 The executive order also proposed the use of marine zoning, including the establishment of marine reserves (Reserve Preservation Areas), n120 and it capped all fishing in the area. n121

#### The 1990 offshore drilling moratorium proves—Congress is key

Howe, 11 (Angela T. Howe \*, \* Managing Attorney, Surfrider Foundation, Ocean and Coastal Law Journal, 2011, 17 Ocean & Coastal L.J. 65, “ARTICLE: THE U.S. NATIONAL OCEAN POLICY: ONE SMALL STEP FOR NATIONAL WATERS, BUT WILL IT BE THE GIANT LEAP NEEDED FOR OUR BLUE PLANET?” Lexis, jj)

In stark contrast to an executive order establishing a national monument, an executive order declaring a moratorium on national offshore oil drilling is an example of a fleeting and weaker executive order. n121 In 1990, responding to the eleven million gallon Exxon Valdez oil spill, President George H. W. Bush used his executive authority to place a moratorium on any leasing or pre-leasing activity in the lower forty-eight states' offshore areas, including a small portion of the eastern Gulf of Mexico. n122 President Clinton also limited new drilling in the rich Bristol Bay fishing grounds in Alaska until 2012; that moratorium was extended until 2017 by President Barack Obama. n123 In addition, since [\*82] 1981, Congress has protected those same offshore waters with a moratorium emplaced as part of its appropriations process. n124 Unfortunately, the Congressional moratorium expired in 2008, and President George W. Bush lifted the executive moratorium before he left office. n125 This example illustrates the fragility of an executive order without a codifying act of Congress.

#### Use of XO on ocean policy causes Republican push back- links to politics

Neela Banerjee, 6/17/14 covers energy and environmental policy out of the Washington, D.C., bureau, Los Angeles Times, “Obama to order major expansion of ocean sanctuary in Pacific” <http://www.latimes.com/nation/la-na-oceans-20140617-story.html> LO

President Obama announced a series of measures Tuesday to protect parts of the world’s oceans, including the creation of a marine sanctuary that would close a large swath of the central Pacific to fishing and energy development. The plan would require federal agencies to take multiple initiatives to address pollution, overfishing and acidification of ocean water, which is driven by climate change. “Rising levels of carbon dioxide are causing our oceans to acidify. Pollution endangers marine life. Overfishing threatens whole species,” Obama said in televised statement to an international conference on ocean policy hosted by the State Department in Washington. “If we ignore these problems, if we drain our oceans of their resources, we won't just be squandering one of humanity's greatest treasures. We'll be cutting off one of the world's major sources of food and economic growth, including for the United States.”

The announcement provides further evidence of Obama’s willingness to use his executive authority to advance priorities in the face of congressional stalemate, and it quickly drew criticism from congressional Republicans, who contend the administration over-regulates natural resources industries and that the president has over-reached his constitutional powers.

#### 6. IBC Turn –

#### a. CP causes interbranch conflict

Rosen 98[Colonel Richard**,** Judge Advocate General's Corps, United States Army, “Funding "Non-Traditional" Military Operations: The Alluring Myth Of A Presidential Power Of The Purse” Military Law Review 155 Mil. L. Rev. 1, Lexis]

Finally, if a situation is sufficiently grave and an operation is essential to national security, **the President has the** raw**, physical power--but not the legal authority--to spend public funds without congressional approval, after which he or she can either seek congressional approbation or attempt to weather the resulting** political storm. To the President's immediate advantage is the fact that the only sure means of directly stopping such unconstitutional conduct is impeachment. ~~703~~ **Congress could**, however, [\*149] **certainly** make a President's life miserable **through other means, such as denying requested legislation or appropriations, delaying confirmation of presidential appointments, and conducting public investigations into the President's actions**.

#### b. This makes multiple scenarios for extinction inevitable

Linda S. **Jamison,** Deputy Director of Governmental Relations @ CSIS, Spring **1993**, *Executive-Legislative Relations after the Cold War,* Washington Quarterly, v.16, n.2, p. 189

Environmental degradation, the proliferation of weapons of mass destruction, population control, migration, international narcotics trafficking, the spread of AIDS, and the deterioration of the human condition in the less developed world are circumstances affecting all corners of the globe. Neither political isolation nor policy bifurcation is an option for the United States. Global circumstances have drastically changed with the end of the Cold War and the political and policy conditions that sustained bipartisan consensus are not applicable to the post-war era. The formulation of a new foreign policy must be grounded in broad-based principles that reflect domestic economic, political and social concerns while providing practical solutions to new situations. Toward a cooperative US Foreign Policy for the 1990s: If the federal government is to meet the new international policy challenges of the post-cold war era, institutional dissension caused by **partisan competition and executive-legislative friction must give way** to a new way of business. Policy flexibility must be the watchword of the 1990s in the foreign policy domain if the United States is to have any hope of securing its interests in the uncertain years ahead. One former policymaker, noting the historical tendency of the United States to make fixed “attachments,” has argued that a changing world dictates policy flexibility, where practical solutions can be developed on principles of broad-based policy objectives (Fulbright 1979). Flexibility, however, will not be possible without interbranch cooperation.

## 1AR

### A2: Congressional Follow On

#### Zero chance of Congressional follow-on AND CP links to politics

Kevin Drum, Mother Jones, 4/22/13, Maureen Dowd and Presidential Leverage, [www.motherjones.com/kevin-drum/2013/04/maureen-dowd-and-presidential-leverage](http://www.motherjones.com/kevin-drum/2013/04/maureen-dowd-and-presidential-leverage)

Finally, there's the most obvious change of all: the decision by Republicans to stonewall every single Obama initiative from day one. By now, I assume that even conservative apologists have given up pretending that this isn't true. The evidence is overwhelming, and it's applied to practically every single thing Obama has done in the domestic sphere. The only question, ever, is whether Obama will get two or three Republican votes vs. three or four. If the latter, he has a chance to win. But those two or three extra votes don't depend on leverage. In fact, Obama's leverage is negative. The last thing any Republican can afford these days is to be viewed as caving in to Obama. That's a kiss of death with the party's base.

### 1AR – XO Fails – Ocean Specific

#### XO TOO WEAK TO SOLVE BENEFITS OF OCEAN POLICY

NIEN-TSU ALFRED HU (The Center for Marine Policy Studies, National Sun Yat-sen University) 3/1/2012 [“Integrated Oceans Policymaking: An Ongoing Process or a Forgotten Concept” Coastal Management, 40:107–118, 2012, loghry]

As noted previously, ocean programs in the United States in 1977 were administered by “9 departments, 8 independent agencies, and 38 agencies or sub-agencies” (U.S. Department of Commerce 1978, IX-1). David Fluharty pointed out in his article “Recent Developments at the Federal Level in Ocean Policymaking in the United States “ that “U.S. policy has evolved to the point that at the national level we have 24 agencies with ocean management responsibilities under the aegis of approximately 147 separate laws many of which have been amended over time.” In a federal system like the United States, it is almost inevitable to see the development of a very complex coordination web for the cooperation between and/or among various federal agencies and state agencies and a set of growing rulings from the courts on the disputes between and/or among these agencies and various sectors. Rather than wrestling with the development and evolution of U.S. oceans policymaking mechanism in the last few decades, Fluharty concentrated on recent efforts made by the Obama administration, especially the so-called “blue/green economy” in the marine sec- tor. He argued that “The current administration under President Obama has emphasized economic recovery and job creation. However, in the marine sector the endorsement of catch-share management in fisheries is consistent with sustainable fishery management but not consistent with job creation. Ocean renewable energy holds significant promise for economic activity and job creation assuming the technological and environmental issues can be resolved. Similarly, offshore aquaculture can serve as an economic and employment bonus if its technological and environmental issues can be resolved and public perceptions improved.”In the end, Fluharty concluded that the legislative action in the 1970s, the courts’ rulings during the 1980s to 1990s, and the administrative branch efforts under the weak instrument of Presidential Executive Orders were not enough to sustain the United States to remain a leader in the development of coastal and ocean policies and “serious efforts must be made to lead the United States forward into a more modern integrated policy and to adapt to climate change, ocean acidification, and other major challenges.”

### 1AR – XO Fails – Rollback

#### Rollback -

#### a. The Courts

Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”* pg..77]

**Despite** the **apparent deference by the judiciary** to the president's orders, **this chapter has plainly demonstrated** any number of **instances in which the White House has lost in court. Executive orders,** both legal and illegal, **can expose officials to liabilit**y. It is an old argument, developed long before the battle over the so-called Nuremberg defense, **that illegal orders do not insulate a public official from liability** for his or her actions. The classic example harks back to Little v. Barreme 13 1 during the Washington administration. Even legal orders can expose the government to liability. Though the **federal courts** have often upheld dramatic actions taken by the president during difficult periods, they **have not been hesitant to support claims against the government** later. The many cases that were brought involving the U.S. Shipping Board Emergency Fleet Corporation after World War I provide examples of just how long such postorder legal cleanup can take and how much it can Cost. 112 Later, in a 1951 case, the Supreme Court subjected government to claims by business for the damages done to their interests during the government's operation of the coal mines during World War II after FDR seized the mines in 1943.133 **Thus, the legal issues that may arise are concerned with both the validity of orders and with addressing the consequences of admittedly legitimate decrees.**

#### b. Future Presidents

Cooper 97 [Phillip, Professor of Poli Sci @ University of Vermont, Administration and Society, Lexis]

Even if they serve temporary goals, **executive orders can produce a significant amount of** complexity and **conflict and not yield a long-term benefit because the next president may dispose of predecessors’ orders at a whim. It may be easier than moving a statute through Congress** and faster than waiting for agencies to use their rule-making processes to accomplish policy ends, **but executive orders may ultimately be a much weaker foundation on which to build a policy** than the alternatives.

#### Congress and the courts will roll back the CP

Howell 5

(William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### Congress circumvents

Pevehouse & Howell ’08, Jon C. Pevehouse, Professor – Poli Sci – UW-Madison, William G. Howell, Sydney Stein Professor in American Politics in the Harris School, a professor in the Department of Political Science and the College, and a co-director of the Program on Political Institutions. While Dangers Gather : Congressional Checks on Presidential War Powers. Princeton, NJ, USA: Princeton University Press, 2008. p 47. <http://site.ebrary.com/lib/wayne/Doc?id=10478247&ppg=12>, jj

When presidents use executive orders, proclamations, and other unilateral directives to advance their policy agendas, their initiatives are not fixed in stone. Congress, after all, has subsequent opportunity to amend and overturn them and, more easily still, to restrict their funding. Hence, when contemplating action, presidents have considerable cause to account for congressional preferences and, when necessary, to adjust course accordingly. The core function of a theory of unilateral action is to identify when adjustments are, in fact, necessary. To wit, the existing American politics literature on the topic pays particular attention to the partisan composition of Congress. When strong majorities stand in opposition to the president, Congress is best equipped and most prone to overturn especially controversial directives. Hence, as we show elsewhere, during such periods presidents prudently issue fewer executive orders. 45 And they are right to do so. Should they press their luck and aggressively issue a bevy of orders, presidents can well expect Congress to amend them, if not strike them down. Only when presidents anticipate that governing majorities within Congress will pretermit his orders will they venture onward.

### XOs Fail – Business Confidence / Certainty

#### XOs fail to create certainty --- specific to oceans --- Congress key to certainty

Fleming, 12 (Rep. Fleming (R-La.) is chairman of the Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, March 30, 2012, The Hill, “National Ocean Policy is an executive power grab” <http://thehill.com/blogs/congress-blog/energy-a-environment/219309-national-ocean-policy-is-an-executive-power-grab>, jj)

Perhaps the simplest way to describe this policy and council is to envision a national zoning board for oceans and all of the inland communities and activities that might affect the oceans. You’ve probably dealt with a local zoning board that keeps order between residential neighborhoods and busy commercials areas. You may not always agree with their decisions, but we can all appreciate local control over such matters. President Obama’s National Ocean Policy takes zoning to a massive scale, giving Washington pencil pushers more power to decide what activities are acceptable in the ocean zones they create. And when federal agencies are authorizing activities, the converse can be assumed: they will close off other activities, and limit authorized activities only to approved zones. The uncertainty that results will further limit economic growth. Coastal communities have already felt the pain of tough economic times. Fishermen are having a hard time making ends meet and many are seeing their harvest levels reduced, while their cost of doing business continues to rise. The House subcommittee I chair has heard testimony describing how harvest levels have been driven down by the lack of agency-funded stock assessments and the closing of fishing grounds. Now, this proposed new policy threatens to take more money from fishery surveys, and will create more closures. To make matters worse, this new National Ocean Policy will reach far inland with new zoning plans, and could use ocean water quality as a way of threatening even farming and forestry practices. The president’s plan enhances uncertainty by giving precedent to ecosystem health over the economic impact of human activities, even if those activities were previously authorized or occurring in an area. That means government bureaucrats, working behind closed doors, may decide that their views on climate change or water quality – both priorities in the policy – will win out over the longstanding interests of people who have depended for decades on the oceans and waterways for their livelihood. Imagine putting those decisions, along with the vague and undefined policy goals of the executive order, in the hands of special interest groups whose agenda is to abolish virtually all human activity. The litigation and court challenges will be endless, and the permits that fishermen and coastal businesses need to continue making a living will be hard to come by. The president’s plan, which has flown under the transparency and accountability radar, lists nearly 60 milestones for federal agencies to accomplish this year as they implement the policy, with another 92 milestones slated for 2013. Yet no federal agency has requested funding for these activities. That means existing missions and management activities of several federal agencies will be put at risk because federal dollars will be re-purposed to support this policy. President Obama’s National Ocean Policy should be authorized by specific legislation and funded through the regular appropriations process. Implementing this power grab through an executive order, with funds diverted from other Congressionally-appropriated programs is simply wrong. Existing laws already manage fisheries, and we don’t need a costly, massive, new, job-destroying layer of bureaucracy to centralize more power in Washington, and jeopardize the liberties of hard-working citizens. Until Congress receives answers to the questions we have asked about the authority and funding for this National Ocean Policy, I will continue to oppose this policy.

### 1AR – XO links to politics – ocean specific

#### Link to politics—democrats and the GOP backlash to ocean policy XO’s

Eilperin, 12 (Juliet Eilperin joined The Washington Post as the House of Representatives reporter, where she covered the impeachment of Bill Clinton, lobbying, legislation, and four national congressional campaigns. Since April of 2004 she has covered the environment for the national desk, reporting on science, policy and politics in areas including climate change, oceans, and air quality. October 28, 2012, Washington Post, “National ocean policy sparks partisan fight” <http://www.washingtonpost.com/national/health-science/national-ocean-policy-sparks-partisan-fight/2012/10/28/af73e464-17a7-11e2-a55c-39408fbe6a4b_story.html>, jj)

For years, ocean policy was the preserve of wonks. But President Obama created the first national ocean policy, with a tiny White House staff, and with that set off some fierce election-year fights. Conservative Republicans warn that the administration is determined to expand its regulatory reach and curb the extraction of valuable energy resources, while many Democrats, and their environmentalist allies, argue that the policy will keep the ocean healthy and reduce conflicts over its use. The wrangling threatens to overshadow a fundamental issue — the country’s patchwork approach to managing offshore waters. Twenty-seven federal agencies, representing interests as diverse as farmers and shippers, have some role in governing the oceans. Obama’s July 2010 executive order set up a National Ocean Council, based at the White House, that is designed to reconcile the competing interests of different agencies and ocean users. The policy is already having an impact. The council, for example, is trying to broker a compromise among six federal agencies over the fate of defunct offshore oil rigs in the Gulf of Mexico. Recreational fishermen want the rigs, which attract fish, to stay, but some operators of commercial fishing trawlers consider them a hazard and want them removed. Still, activists invoking the ocean policy to press for federal limits on traditional maritime interests are having little success. The Center for Biological Diversity cited the policy as a reason to slow the speed of vessels traveling through national marine sanctuaries off the California coast. Federal officials denied the petition. During a House Natural Resources Committee hearing on ocean policy last year, the panel’s top Democrat, Rep. Edward J. Markey (Mass.), said that “opposing ocean planning is like opposing air traffic control: You can do it, but it will cause a mess or lead to dire consequences.” Rep. Steve Southerland II (R-Fla.), who is in a tight reelection race, retorted that the policy was “like air traffic control helping coordinate an air invasion on our freedoms.” An environmental group called Ocean Champions is spending hundreds of thousands of dollars to unseat him. The sharp rhetoric puzzles academics such as Boston University biologist Les Kaufman. He contributed to a recent study that showed that using ocean zoning to help design wind farms in Massachusetts Bay could prevent more than $1 million in losses to local fishery and whale-watching operators while allowing wind producers to reap $10 billion in added profits by placing the turbines in the best locations. Massachusetts adopted its own ocean policy, which was introduced by Mitt Romney, the Republican governor at the time, and later embraced by his Democratic successor, Deval L. Patrick. “The whole concept of national ocean policy is to maximize the benefit and minimize the damage. What’s not to love?” Kaufman said, adding that federal officials make decisions about offshore energy production, fisheries and shipping without proper coordination. Nearly a decade ago, two bipartisan commissions called upon the government to coordinate its decisions regarding federal waters, which extend from the roughly three-mile mark where state waters end to 200 miles from shore. When Romney moved to establish ocean zoning in 2005 in Massachusetts, he warned that without it there could be “a Wild West shootout, where projects were permitted on a ‘first come, first served’ basis.” In Washington, however, legislation to create an ocean zoning process failed. The policy set by Obama in 2010 calls for five regions of the country — the Mid-Atlantic, New England, the Caribbean, the West Coast and the Pacific — to set up regional bodies to offer input. White House Council for Environmental Quality spokeswoman Taryn Tuss said the policy does not give the federal government new authority or change congressional mandates. “It simply streamlines implementation of the more than 100 laws and regulations that already affect our oceans.” House Natural Resources Committee Chairman Doc Hastings (R-Wash.) said he is not opposed to a national ocean policy in theory. But he said he is concerned that the administration’s broad definition of what affects the ocean — including runoff from land — could open the door to regulating all inland activities, because “all water going downhill goes into the ocean. . . . That potential could be there.” The House voted in May to block the federal government from spending money on implementing the policy, though the amendment has not passed the Senate. Two influential groups — anglers and energy firms — have joined Republicans in questioning the administration’s approach. In March, ESPN Outdoors published a piece arguing that the policy “could prohibit U.S. citizens from fishing some of the nation’s oceans, coastal areas, Great Lakes, and even inland waters.” The article, which convinced many recreational fishermen that their fishing rights were in jeopardy, should have been labeled an opinion piece, the editor said later. “Fishermen saw this as just another area where fishing was going to be racheted down,” said Michael Leonard, director of ocean resource policy for the American Sportfishing Association, whose 700 members include the nation’s major boat manufacturers, as well as fish and tackle retailers. Leonard added that the White House has solicited some input from anglers since launching the policy and that they will judge the policy once its final implementation plan is released, after the election. The National Ocean Policy Coalition — a group based in Houston that includes oil and gas firms as well as mining, farming and chemical interests — has galvanized industry opposition to the policy. Its vice president works as an energy lobbyist at the law firm Arent Fox; its president and executive director work for the firm HBW Resources, which lobbies for energy and shipping interests. Brent Greenfield, the group’s executive director, said that the public has not had enough input into the development of the policy and that his group worries about “the potential economic impacts of the policy on commercial or recreational activity.” Sarah Cooksey, who is Delaware’s coastal-programs administrator and is slated to co-chair the Mid-Atlantic’s regional planning body, said the policy will streamline application of laws already on the books. “No government wants another layer of bureaucracy,” she said. In Southerland’s reelection race, Ocean Champions has labeled the congressman “Ocean Enemy #1” and sponsored TV ads against him. Jim Clements, a commercial fisherman in the Florida Panhandle district, has mounted billboards against Southerland on the grounds his stance hurts local businesses. Southerland declined to comment for this article. Ocean Champions President David Wilmot said that while most ocean policy fights are regional, this is “the first issue I’ve seen that’s become partisan. I do not think it will be the last.”

Links to politics

Banaerjee 6/17/14

(Neela Banerjee, June 17, 2014, reporter for the LA times, <http://www.latimes.com/nation/la-na-oceans-20140617-story.html>)

President Obama announced a series of measures Tuesday to protect parts of the world’s oceans, including the creation of a marine sanctuary that would close a large swath of the central Pacific to fishing and energy development.¶ The plan would require federal agencies to take multiple initiatives to address pollution, overfishing and acidification of ocean water, which is driven by climate change.¶ “Rising levels of carbon dioxide are causing our oceans to acidify. Pollution endangers marine life. Overfishing threatens whole species,” Obama said in televised statement to an international conference on ocean policy hosted by the State Department in Washington.¶ Map: Expansion of marine sanctuary in the Pacific¶ “If we ignore these problems, if we drain our oceans of their resources, we won't just be squandering one of humanity's greatest treasures. We'll be cutting off one of the world's major sources of food and economic growth, including for the United States.”¶ The announcement provides further evidence of Obama’s willingness to use his executive authority to advance priorities in the face of congressional stalemate, and it quickly drew criticism from congressional Republicans, who contend the administration over-regulates natural resources industries and that the president has over-reached his constitutional powers.¶ lRelated EPA unveils far-reaching climate plan targeting power plants¶ NATION¶ EPA unveils far-reaching climate plan targeting power plants¶ SEE ALL RELATED ¶ 8¶ “This is yet another example of how an imperial president is intent on taking unilateral action, behind closed doors, to impose new regulations and layers of restrictive red-tape,” said House Natural Resources Committee Chairman Doc Hastings (R-Wash.). “Oceans, like our federal lands, are intended to be multiple-use and open for a wide range of economic activities that includes fishing, recreation, conservation, and energy production.”¶ Among the ocean plan’s most ambitious and controversial steps would be expansion of the Pacific Remote Islands Marine National Monument southwest of Hawaii. In January 2009, President George W. Bush gave monument status to nearly 87,000 square miles around Howland, Baker, and Jarvis Islands; Johnston, Wake, and Palmyra Atolls; and Kingman Reef. The islands are uninhabited, and the area is one the few pristine stretches of marine environment in the world and home to thousands of migratory birds, fish and mammals.¶ Related story: Ocean acidification is killing sea life, and we are the culprits¶ Related story: Ocean acidification is killing sea life, and we are the culprits¶ David Horsey¶ The Obama plan envisions extending monument protection from the current limit of 50 nautical miles around the islands to 200 miles, thereby limiting fishing and energy development over a far larger expanse of ocean. The proposal could more than double the area of ocean protected by the United States, environmental groups said.¶ The expanded protections, which under federal law the president can order without congressional approval, could go into effect this year after a public comment period.¶ Joshua S. Reichert, executive vice president of the Pew Charitable Trusts, said he expected considerable resistance to the expansion plan from the domestic tuna industry. But he said Pew estimates that about 1% to 3% of the U.S. annual tuna catch would be affected by the plan if it went forward.¶ cComments¶ @tommythek501, Many, many of these islands are uninhabited. I've been to Kwajalein Atoll, the largest atoll is the South Pacific (5 times) and this is usually the case as some of the islands are just 1/4 square mile or less in size. They are connected by underwater reefs.¶ EINSTEINSGIRL¶ AT 9:04 PM JUNE 18, 2014¶ ADD A COMMENTSEE ALL COMMENTS ¶ 67¶ “The importance of these uninhabited islands is far greater than the value of the fish there,” Reichert said. The proposed protection zone holds some of the world’s “richest marine life and least disturbed areas," he said. "It’s immensely valuable to science and home to vast numbers of ocean species. The importance of keeping these places intact far transcends the short-term value of what can be extracted for commercial gain.”¶ The president also established a task force of at least a dozen federal agencies, including the Pentagon and Justice Department, that must develop recommendations to better combat seafood fraud and illegal fishing within the next six months.¶ Related story: Fishing restrictions largely obeyed at marine sanctuaries¶ Related story: Fishing restrictions largely obeyed at marine sanctuaries¶ Tony Barboza¶ Illegal seafood accounts for one-fifth to one-third of wild-caught seafood imported to the U.S. in 2011, according to a recent study in the journal, Marine Policy. Further, about one-third of seafood is mislabeled, according to a study last year by the environmental group Oceana, which analyzed more than 1,200 seafood samples bought in 21 states. The study found that fish sold as snapper was misidentified 87% of the time and tuna, mislabeled 59% of time.¶ “Because our seafood travels through an increasingly long, complex and non-transparent supply chain, there are numerous opportunities for seafood fraud to occur and illegally caught fish to enter the U.S. market,” said Beth Lowell, director of Oceana’s Stop Seafood Fraud campaign. “By tracing our seafood from boat to plate, consumers will have more information about the fish they purchase.”¶ The White House plan would also improve monitoring of ocean acidification, fueled by the ever-greater amounts of carbon dioxide the oceans absorb. Atmospheric carbon dioxide has increased by about 40% since the preindustrial era, thanks to the combustion of fossil fuels, according to a report issued Tuesday by the White House Office of Science and Technology.¶ Oceans absorb about 25% of the carbon dioxide that human activity generates, and when the gas dissolves in seawater, some of it forms carbonic acid. Greater ocean acidity poses a threat to a range of marine life, including coral reefs and shellfish beds, like oyster hatcheries in the Pacific Northwest. Under the plan, the National Oceanic and Atmospheric Administration would get $9 million over three years to better monitor the local effect of ocean acidification, which, in turn, could help individual coastal communities.

### 1AR – XO links to politics – general

#### Links to all the net benefits

Ulrich ’08, Marybeth P. Ulrich, European Studies – Wilson Center, June 2008, Strategic Studies Institute of the US Army War College (SSI), National Security Powers: Are the Checks in Balance?, online, jj

Executive orders have mainly been used in three areas: to combat various forms of discrimination¶ against citizens, to increase White House control over the executive branch, and to maintain secrets.21 When Congress perceives that executive orders are taken to bypass Congress on controversial¶ issues, they may elicit great political controversy and be a source of conflict between the two¶ branches. This is why the congressional reaction to President George W. Bush’s series of executive¶ orders authorizing the National Security Agency (NSA) to eavesdrop on the conversations of¶ Americans without warrants as required in the Foreign Intelligence Surveillance Act (FISA) has¶ been uncharacteristically strong. Members of Congress on both sides of the aisle saw the action as a¶ challenge to the Congress’ power vis-à-vis the executive.¶ Even the prospect of an executive order being issued can erupt in major political controversy as¶ was the case with President Bill Clinton’s proposal to lift the ban on gays serving in the military.¶ There was no question that the President had the legitimate authority to issue such an order as¶ President Truman had done to integrate the armed forces in 1948, but the political backlash was so¶ strong in 1993 that President Clinton abandoned the idea in order to salvage his domestic agenda¶ before Congress.22

#### CP links to politics more

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ **And the political opposition howls**.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years **there has been a growing concern about unchecked executive power**,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Obama will get the blame

Nicholas and Hook 10(Peter and Janet, Tribune Washington Bureau, July 30, "Obama the Velcro president", http://articles.latimes.com/2010/jul/30/nation/la-na-velcro-presidency-20100730)jn

Those towering goals remain a long way off. And most people would have preferred to see Obama focus more narrowly on the "good jobs" part of the promise. A recent Gallup poll showed that 53% of the population rated unemployment and the economy as the nation's most important problem. By contrast, only 7% cited healthcare — a single-minded focus of the White House for a full year. At every turn, Obama makes the argument that he has improved lives in concrete ways. Without the steps he took, he says, the economy would be in worse shape and more people would be out of work. There's evidence to support that. Two economists, Mark Zandi and Alan Blinder, reported recently that without the stimulus and other measures, gross domestic product would be about 6.5% lower. Yet, Americans aren't apt to cheer when something bad doesn't materialize. Unemployment has been rising — from 7.7% when Obama took office, to 9.5%. Last month, more than 2 million homes in the U.S. were in various stages of foreclosure — up from 1.7 million when Obama was sworn in. "Folks just aren't in a mood to hand out gold stars when unemployment is hovering around 10%," said Paul Begala, a Democratic pundit. Insulating the president from bad news has proved impossible. Other White Houses have tried doing so with more success. Reagan's Cabinet officials often took the blame, shielding the boss. But the Obama administration is about one man. Obama is the White House's chief spokesman, policy pitchman, fundraiser and negotiator. No Cabinet secretary has emerged as an adequate surrogate. Treasury Secretary Timothy F. Geithner is seen as a tepid public speaker; Energy Secretary Steven Chu is prone to long, wonky digressions and has rarely gone before the cameras during an oil spill crisis that he is working to end. So, more falls to Obama, reinforcing the Velcro effect: Everything sticks to him. He has opined on virtually everything in the hundreds of public statements he has made: nuclear arms treaties, basketball star LeBron James' career plans; Chelsea Clinton's wedding. Few audiences are off-limits. On Wednesday, he taped a spot on ABC’s “The View,” drawing a rebuke from Democratic Pennsylvania Gov. Edward G. Rendell, who deemed the appearance unworthy of the presidency during tough times. “Stylistically, he creates some of those problems,” Eddie Mahe, a Republican political strategist, said in an interview. “His favorite pronoun is ‘I.’ When you position yourself as being all things to all people, the ultimate controller and decision maker with the capacity to fix anything, you set yourself up to be blamed when it doesn’t get fixed or things happen.” A new White House strategy is to forgo talk of big policy changes that are easy to ridicule. Instead, aides want to market policies as more digestible pieces. So, rather than tout the healthcare package as a whole, advisors will talk about smaller parts that may be more appealing and understandable – such as barring insurers from denying coverage based on preexisting conditions. But at this stage, it may be late in the game to downsize either the president or his agenda. Sen. Richard J. Durbin (D-Il.) said: “The man came in promising change. He has a higher profile than some presidents because of his youth, his race and the way he came to the White House with the message he brought in. It’s naïve to believe he can step back and have some Cabinet secretary be the face of the oil spill. The buck stops with his office.”

#### Unpopular XOs have political consequences and spark massive congressional backlash

Risen 4 [Clay, Managing editor of *Democracy: A Journal of Ideas,* M.A. from the University of Chicago “The Power of the Pen: The Not-So-Secret Weapon of Congress-wary Presidents” The American Prospect, July 16, http://www.prospect.org/cs/articles?article=the\_power\_of\_the\_pen]

The most effective check on executive orders has proven to be political. W**hen it comes to executive orders, “The president is much more clearly responsible**,” says Dellinger, who was heavily involved in crafting orders under Clinton. “Not only is there no involvement from Congress, but **the president has to personally sign the order**.” **Clinton's Grand Staircase-Escalante** National Monument executive **order** may have helped him win votes, but it also **set off a massive congressional and public backlash**. Right-wing Internet sites bristled with comments about “dictatorial powers,” and Republicans warned of an end to civil liberties as we know them. “President Clinton is running roughshod over our Constitution,” said then–House Majority Leader Dick Armey. Indeed, **an unpopular executive order can have immediate--and lasting--political consequences**. In 2001, for example, **Bush** **proposed** **raising** the **acceptable** **number** **of** parts per billion **of arsenic in drinking water**. It was a bone he was trying to toss to the mining industry, and it would have overturned Clinton's order lowering the levels. But **the overwhelmingly negative public reaction forced Bush to quickly withdraw his proposal--and it painted him indelibly as an anti-environmental president**.

#### Executive orders turn the President into a lightning rod

Cooper 97 [Phillip, Professor of Poli Sci @ University of Vermont, Administration and Society, Lexis]

Interestingly enough, **the effort to avoid opposition from Congress** or agencies **can have the effect of turning the White House itself into a** lightning rod**. When an administrative agency takes action** under its statutory authority and responsibility, **its opponents generally focus their conflicts as limited disputes aimed at the agency** involved. **Where the White House employs an executive order**, for example, to shift critical elements of decision making from the agencies to the executive office of the president, **the nature of conflict changes and the** focus shifts to 1600 Pennsylvania Avenue or at least to the executive office buildings The saga of the OTRA battle with Congress under regulatory review orders and the murky status of the Quayle Commission working in concert with OIRA provides a dramatic case in point. The nature and focus of conflict is in some measure affected by the fact that executive orders take administrative action outside the normal rules of administrative law. And although there are tensions in that field of law, the fact is that it has been carefully developed over time with the intention of accommodating the needs of administration and the demands for accountability by agencies filled with unelected administrators who make important decisions having the force of law in the form of rules and administrative adjudications. On one hand, administrative law requires open, orderly, and participative decision processes, but it also creates significant presumptions in favor of administrative agencies. The courts provide legal support in the form of favorable decisions as well as assisting agencies in enforcement through orders enforcing subpoena and other investigative authority while also ordering compliance with agency decisions once the investigations and decision processes are complete. Administrative law also provides a vehicle for integrating administrative decisions having the force of law with the larger body of law and policy. **The use of executive orders to confound or circumvent normal administrative law is counterproductive and ultimately dysfunctional.**

#### Independent use of executive power saps political capital

Simendinger ‘02 (Alexis, Staff Writer – National Journal, The Power of One, National Journal, 1-26, Lexis)

Bush's **White House aides insist that the President knows how valuable his political capital is**, and that he has to spend that capital wisely. To presidency scholars such as Richard E. Neustadt, who wrote a seminal 1960 book on the subject, real presidential power is the strength and standing to persuade, in order to bring about government action. It is not just the authority to effect change by edict. "From the veto to appointments, from publicity to budgeting, and so down a long list, the White House now controls the most encompassing array of vantage points in the American political system," Neustadt wrote. **Bush's first year suggests he understood how to bargain when the policies at issue were most important to him personally tax cuts and school accountability, for instance. Before September 11, however**, **the President seemed to get into the most trouble when he exercised power alone**. **The cumulative uproar over** arsenic in water, his **early regulatory actions** that had an anti-green tinge, and the energy policies that favored the oil and gas industries **were sour notes for Bush with the public and with many in Congress**. **The White House is still feeling the effects of those missteps** as Bush heads into his second year.

#### Executive orders reinforce legislative victories, not used to circomvent congress

Deering and Maltzman 99 [Christopher J and Forrest, Prof of Political Science @ GWU, “The Politics of Executive Orders: Legislative Constraints on Presidential Power”, Political Research Quarterly, Vol. 52, December 1999, Sage Journals]

Support for the strategic model has historically come in the form of case studies. Using quantitative evidence, however, Shull and his co-authors have recently cast doubt on the conventional wisdom (Gleiber and Shull 1992; Gomez and Shull 1995; Shull 1997). Because Presidents issue more executive orders under unified than divided government, Shull (1997: 103) concludes that executive orders are primarily a vehicle for reinforcing legislative victories, rather than circumventing a hostile Congress.

### IBC DA Ext – Turns Prez Power

#### Inter-branch conflict weakens Presidential power

Weida ‘04 [Jason Collins, JD Candidate @ University of Connecticut School of Law, “A Republic of Emergencies: Martial Law in American Jurisprudence” Connecticut Law Review, 36 Conn. L. Rev. 1397, Lexis]

The opinion that has had greatest influence, however, is not Black's majority opinion, but Justice Jackson's concurrence. 302 Jackson set forth the framework by which courts would examine the use of emergency powers in the years to come. 303 At the heart of Jackson's theory of separation of powers was relativity--that **presidential powers fluctuate depending upon their juxtaposition with those of Congress.** 304 Jackson deduced three categories which determined the degree of the President's authority under the Constitution to implement emergency measures. 305 **The first involved an executive action pursuant to an express** or implied **authorization from Congress.** 306 **Under these circumstances, presidential power was at its height, "for it includes all that he possesses in his own right plus all that Congress can delegate."** 307 **The Court would bestow congressional-executive cooperation with "the strongest of presumptions and the widest** [\*1431] **latitude of judicial interpretation."** 308 The second situation entailed an action in which the President and Congress had concurrent authority, yet Congress was silent on the matter. 309 Here, the President could bring only the executive's independent powers to bear, on which the emergency measure would stand or fall. 310 The third category addressed those **presidential actions which were in direct contravention with the express or implied will of Congress.** 311 Such acts **represented the** lowest constitutional authority of the President, subject to scrutiny by the courts. 312 Jackson placed Truman's seizure in the third category because Congress had considered, and rejected, an amendment in the Taft-Hartley Act that would have provided for exactly that which Executive Order No. 10340 sought to accomplish. 313 Thus, Jackson concurred

### IBC DA Ext – Turns Solvency

#### Interbranch battles hold up agency action – major delays on implementation

Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”* 232-233]

A president who is focused on the short-term, internal view of a possible decision may elect a power management approach. The emphasis is on efficient, effective, prompt, and controlled action within the executive branch. This is an increasingly common approach employed by new administrations; certainly it has been by Reagan and his successors. Whether spoken or unspoken, **the tendency to adopt a power management perspective as the base for the use of presidential direct action tools may grow from an assumption that alternative approaches will simply not work or not work rapidly enough because of recalcitrant administrative agencies or opposition by other institutional players** inside or outside the Beltway. The executive orders on rulemaking issued by presidents Carter, Reagan, Bush, and Clinton and the Bush memoranda on the rulemaking moratorium are clear examples of this approach. The tendency to use this approach may also stem from the idea that the situation confronting the White House is a real or a perceived emergency in which the executive branch must be mobilized for action. Another tendency is to use this type of approach in national security matters where the White House holds the view that time is of the essence and a particular window of opportunity exists that must be seized. This kind of action is common in the use of national security directives. Control of sensitive materials, personnel practices, or communications is often the focus of this kind of activity. **Another feature of the power management approach is the attempt to use the policies of the executive branch to make a wider political point**. Certainly the Reagan administration's Drug Free Workplace order is an example, as are many of the Clinton-era orders and memoranda associated with the reinventing government initiative. Still, the power management approach presents many of the dangers and challenges of the various types of instruments. The costs can be high, and the damage both within government and to people outside it can be significant. The **rulemaking orders have tied administrative agencies up in knots for years and have trapped them in a cross fire between the Congress that adopted statutes requiring regulations to be issued and presidents who tried to measure their success by the number of rulemaking processes they could block**. **Reagan's NSD 84** and other related directives **seeking to impose** dramatically intensified **controls on access to information and control over communication** during and after government employment **incited a mini rebellion** even **among** a number of **cabinet** level **officials** **and conveyed a sense of the tenor of leadership being exercised** in the executive branch t**hat drew fire from many sources**. **The Clinton ethics order** was meant to make a very public and political point, but it **was one of the factors contributing to the administration's inability to staff many of its key positions for months**.

### IBC DA Ext – Hegemony

#### Executive-legislative tensions destroy leadership

Ikenberry ‘01(G John, Prof – Georgetown U., The National Interest, Spring, Lexis)

**When other** major **states consider whether to work with the U**nited States **or resist it, the fact that it is an open, stable democracy matters**. The outside world can see American policymaking at work and can even find opportunities to enter the process and help shape how the overall order operates. Paris, London, Berlin, Moscow, Tokyo and even Beijing-in each of these **capitals** officials **can readily find reasons to conclude that an engagement policy toward the U**nited **S**tates **will be more effective than balancing** against U.S. power. America in large part stumbled into this open, institutionalized order in the 1940s, as it sought to rebuild the postwar world and to counter Soviet communism. In the late 1940s, in a pre-echo of today's situation, the United States was the world's dominant state--constituting 45 percent of world GNP, leading in military power, technology, finance and industry, and brimming with natural resources. But America nonetheless found itself building world order around stable and binding partnerships. Its calling card was its offer of Cold War security protection. But the intensity of political and economic cooperation between the United States and its partners went well beyond what was necessary to counter the Soviet threat. As the historian Geir Lundestad has observed, the expanding American political order in the half century after World War II was in important respects an "empire by invitation."(n5) The remarkable global reach of American postwar hegemony has been at least in part driven by the efforts of European and Asian governments to harness U.S. power, render that power more predictable, and use it to overcome their own regional insecurities. The result has been a vast system of America-centered economic and security partnerships. **Even though the** United States **looks like a wayward power to many** around the world today, **it** nonetheless has an unusual ability to co-opt and reassure. Three elements matter most in making U.S. power more stable, engaged and restrained. First, **America's mature political institutions** organized around the rule of law **have made it a relatively predictable and cooperative hegemon**. **The** pluralistic and regularized way **in which** U.S. **foreign** and security **policy is made** reduces surprises and allows other states to build long-term, mutually beneficial relations. **The** governmental separation of powers **creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt** or aggressive **moves** toward other states. An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. The messiness of a democracy can, indeed, frustrate American diplomats and confuse foreign observers. But **over the long term**, democratic institutions produce more consistent and credible policies--**policies that do not reflect the** capricious and idiosyncratic **whims of an autocrat**.

#### Executive action without Congressional support undermines foreign relationships and weakens the effectiveness of U.S. foreign policy

Paul ‘2K(Joel Richard, Prof U Cal Hastings College of Law, Chicago Journal of Int’l Law, Fall, Lexis)

To restore balance to the Constitution, the courts should exercise jurisdiction over any claim arising from the president's failure to invoke the WPR. By forcing the president to provide the required notice to Congress, the courts would compel Congress to decide within sixty days whether to authorize the use of force. Whether Congress approves or disapproves of the president's action, Congress should be obliged to say so. **The present situation allows Congress to take the course of least resistance by doing nothing.** At present, if the military exercise succeeds, Congress can congratulate the president; it if fails, Congress can avoid the blame. But **democracy suffers when Congress does not make a decision, because the voters cannot hold their representatives accountable for the use of military force.** Moreover, **when Congress avoids taking responsibility for foreign commitments, US foreign policy suffers. While Congress waits to see which way popular opinion is swinging, the United States appears weak and irresolute. US allies cannot depend upon its foreign commitments if the executive is acting without the public support of Congress.** Thus, courts would strengthen our democracy and our foreign policy by imposing upon Congress the duty to decide on the record whether to support the president's use of military forces. Enforcing the WPR is one illustration of how US courts could correct the executive's encroachment on congressional foreign relations power.

#### Strong separation of powers are essential for US global leadership

G. John Ikenberry, Professor @ Georgetown University, Spring 2001 (The National Interest)

First, **America's mature political institutions organized around the rule of law have made it a relatively predictable and cooperative hegemon. The pluralistic and regularized way in which U.S. foreign and security policy is made reduces surprises and allows other states to build long-term, mutually beneficial relations. The governmental separation of powers creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt or aggressive moves toward other states**. An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. **The messiness of a democracy can**, indeed, **frustrate American diplomats and confuse foreign observers. But over the long term, democratic institutions produce more consistent and credible policies--policies that do not reflect the capricious and idiosyncratic whims of an autocrat**. Think of the United States as a giant corporation that seeks foreign investors. It is more likely to attract investors if it can demonstrate that it operates according to accepted accounting and fiduciary principles. The rule of law and the institutions of policymaking in a democracy are the political equivalent of corporate transparency and accountability. Sharp shifts in policy must ultimately be vetted within the policy process and pass muster by an array of investigatory and decision-making bodies. **Because it is a constitutional, rule-based democracy, outside states are more willing to work with the U**nited **S**tates-or, to return to the corporate metaphor, to invest in ongoing partnerships.

### SOP DA

#### OCEAN XOs VIOLATE SEPARATION OF POWER

Emily Migliaccio (J.D. Vermont Law) 2014 [“THE NATIONAL OCEAN POLICY: CAN IT REDUCE MARINE POLLUTION AND STREAMLINE OUR OCEAN BUREAUCRACY?” VERMONT JOURNAL OF ENVIRONMENTAL LAW, online @ <http://vjel.vermontlaw.edu/files/2014/04/Migliaccio_FORPRINT1.pdf>, loghry]

On its face, particularly to the ocean conservationist, the NOP seems ¶ like a neutral, common-sense policy. However, the policy has sparked some ¶ criticism. Opponents argue, for example, that the NOP is an executive ¶ “power grab”—one “that circumvents existing state and local decision-¶ making bodies . . . without the consent of Congress, without the consent of ¶ the governors, and, most important of all, without the consent of the ¶ governed.”122¶ Along these lines is the fear that the Executive Order presents ¶ a separation of powers issue, thus violating the Constitution, by “creat[ing] ¶ via the [NOP], a new set of requirements with which existing statutes are to ¶ be consistent, and then plac[ing] these new standards beyond judicial ¶ review. This effectively constitutes the enactment of new legislation that ¶ violates the separation of powers set forth in the U.S. Constitution.”123¶ However, these fears may be premature.

## A2: Pres Powers Net Benefit

### PP high

#### PRESIDENTIAL POWER EXPANDING, OBAMA HAS PLENTY OF ROOM TO ISSUE ORDERS AND MAINTAIN POWER

Buffalo News (staff) 2/9/2014 [“Claims of presidential lawlessness don't hold water” lexis, loghry]

But overwrought doesn't equal unimportant. Presidential power tends to be a one-way ratchet; few presidents voluntarily cede power that a predecessor has accumulated.So it's worth turning down the partisan volume and assessing Obama's edgiest actions: Suspending certain deportations in the face of congressional refusal to take that step; delaying and revising parts of the Affordable Care Act; effectively rewriting the No Child Left Behind law through sweeping waivers; and, most recently, unilaterally ordering an increase in the minimum wage for federal contractors.These are push-the-envelope moves, but strike me as within the bounds of the modern presidency. Some historical perspective: First, the constitutional tug-of-war between the president and Congress is as old as the republic - indeed, an essential element in the constitutional design. The framers were wary not only of creating a monarchical chief executive but also one hobbled by congressional interference. Second, there is a robust history of presidents pushing ambiguous constitutional boundaries to engage in unilateral action. Thomas Jefferson executed the Louisiana Purchase despite his own doubts about its constitutionality. Abraham Lincoln issued the Emancipation Proclamation, notwithstanding the Constitution's recognition of slavery and his own concerns about the proclamation's susceptibility to legal challenge. Third, this trend toward broad presidential power has accelerated in recent decades, under presidents of both parties - even before George W. Bush's aggressive use of signing statements, and his war on terror. In a 2001 Harvard Law Review article, Elena Kagan, a veteran of the Clinton White House, traced the growth of presidential power over regulatory agencies to Ronald Reagan (in pursuit of efforts to loosen regulations) through Bill Clinton (in pursuit of more activist government). Clinton's unprecedented interventions, she wrote, represented a "significant enhancement of presidential power over regulatory matters."Fourth, assessments of presidential overreach are inherently matters of situational ethics: How you judge whether a president is overstepping his authority is inevitably colored by whether you agree with the substance of that exercise.Put more bluntly, much of the hoopla about presidential imperialism is politics dressed up in constitutional clothing, to be put on and off depending on which party holds the White House.Immigration offers one particularly inflammatory example. Republicans denounce Obama for having evaded congressional refusal to pass the DREAM Act by unilaterally declaring that some children of undocumented immigrants will not be subject to deportation. Meanwhile, some on the left complain that he has not taken more aggressive action by suspending all deportations."A lot of people have been saying this lately on every problem ... just sign an executive order and we can pretty much do anything and basically nullify Congress," Obama said in November. "That's not how it works. We got this Constitution. We got this whole thing about separation of powers and branches." So where does Obama fit on the spectrum of presidential power-grabbing? Johns Hopkins political scientist Benjamin Ginsberg is a fierce critic of presidential overreach. But he places Obama on the mild end of such abuses. "There has been an onward march toward presidential unilateralism," Ginsberg told me. "Obama has been the least aggressive, least unilateral, of our recent presidents."

#### Presidential power high even without XOs – economic crisis

Walsh 9 [Kenneth, Chief White House Correspondent, “Obama, Like Bush, Uses Crisis to Expand Presidential Power” US News and World Report, March 16, http://www.usnews.com/articles/news/obama/2009/03/16/obama-like-bush-uses-crisis-to-expand-presidential-power.html?PageNr=2]

It's clear that **Obama is intent on changing America's course** in a dramatic way, as Ronald Reagan did in 1981. But [Obama](http://www.usnews.com/articles/news/obama/2009/03/16/obama-like-bush-uses-crisis-to-expand-presidential-power.html?PageNr=2), while he admires Reagan's "transformational" approach, seeks to reverse much of what Reagan accomplished. "This is a guy who is defining a new way forward," says Will Marshall, president of the centrist Progressive Policy Institute. "This is terra incognita. **People aren't used to seeing changes in government that are this dramatic.**" In a way, **Obama** **is doing what** George W. **Bush did in the national security sphere, using a crisis to expand presidential authority**. After the 9/11 terrorist attacks, Bush moved to increase and exert his war-making powers. Now, **amid the recession and financial meltdown, Obama is moving to increase and exert his peacetime powers.** **The result** in both cases **has been a more muscular presidency**.

#### Obama has more presidential power than any other president since Roosevelt

Holland 9 [Steve, CBS White House Correspondent, “Obama Revelling in US Power Unseen in Decades” Reuters May 1, http://uk.reuters.com/article/idUKTRE5406CF20090501?pageNumber=3&virtualBrandChannel=0]

Barack **Obama is** revellinginpresidentialpower and influence **unseen** in Washington **for decades**. Barely 100 days in office, the U.S. president and **his Democratic Party have firm control over** the White House and Congress **and the ability to push through ambitious plans**. Now, with the coming retirement of a Supreme Court justice clearing the way for him to appoint a successor, **Obama already is assured a legacy at the top of all three branches of government** -- executive, legislative and judicial. On the corporate front, the federal government's pumping of billions of dollars in bailout money into banks and auto companies has given Obama the power to force an overhaul in those industries, a remarkable intervention in capitalist industries by the state. Americans are giving him leeway as well. His job approval ratings are well over 60 percent, giving him political capital to undertake big challenges. **His political opponents**, the Republicans, **are in disarray, reduced in numbers and engaged in an internal struggle over how to recover from devastating election losses** in 2006 and last year. Experts speak of Obama in the same league as such transformational presidents as Democrat Franklin Roosevelt, who led the United States through the Great Depression and World War Two, and Republican Ronald Reagan, who led the country to victory in the Cold War. "I **cannot in my memory remember a time when a president of the United States has had more influence," said Democratic strategist** Doug **Schoen**, who worked in the Clinton White House. "Not only is it his moment, **it is a level of influence and power for a president that is literally unprecedented from any time since the New Deal** and Franklin Roosevelt. If he handles it right, it could be his century."

#### Obama is expanding government and his presidential authority

Doherty 9 [Brian, senior editor @ Reason Magazine, “President of Everything” April 27, Reason Magazine, <http://www.reason.com/news/show/133045.html>]

That thoughtful skeptic of executive power now sits in the Oval Office. Isolating random bits of his presidential rhetoric, you can almost believe that he understands how a society really thrives**. Obama said in** his **pseudo-State of the Union Address**, “**The answers to our problems don’t lie beyond our reach**. They exist in our laboratories and universities; in our fields and our factories; in the imaginations of our entrepreneurs and the pride of the hardest-working people on Earth.” But **in just three months, we have seen what Obama means when he talks about “reach**.” He doesn’t mean “our reach” but his own. **His sense of that reach, and the abrupt and scary speed with which he’s used it, marks him as an executive with a tentacled grip**—**multiple, crushing, inescapable**. **No longer the cautious critic of presidential power** of the campaign trail, **he now sees nothing as beyond his grasp.** Less than a hundred days in, the fully articulated ideological contours of his vision remain unclear—just as he wishes. It suits Obama’s self-image as a mere pragmatic problem solver to never explain, to float from power grab to usurpation as if nothing but thoughtful reaction to the exigencies of the moment guides him. But **it’s already obvious that those actions veer strongly toward expansive government,** limiting our options in every aspect of national life.

### Prez Powers Inevitable

#### Obama will inevitable assert unilateral powers if other branches impede his agenda

Greenwald 9 [Glenn, JD, NYU Law School, columnist @ Salon News “Obama contemplates Executive Order for detention without charges” Salon, June 27 <http://www.salon.com/opinion/greenwald/2009/06/27/preventive_detention/>]

**There has** now **emerged** **a** very clear -- and very disturbing -- **pattern** **whereby Obama is willing to use legal mechanisms and recognize the authority of other branches only if he's assured that he'll get the outcome he wants**.  **If he can't get what he wants** from those processes, **he'll** just **assert** Bush-like **unilateral powers to bypass** those **processes** and do what he wants anyway.  In other words, what distinguishes Obama from the first-term Bush is that Obama is willing to indulge the charade that Congress, the courts and the rule of law have some role to play in political outcomes as long as they give him the power he wants.  But where those processes impede Obama's will, **he'll just bypass them and assert the unilateral power to do what he wants anyway** (by contrast, the first-term Bush was unwilling to go to Congress to get expanded powers even where Congress was eager to give them to him; the second-term Bush, like Obama, was willing to allow Congress to endorse his radical proposals:  hence, the Military Commissions Act, the Protect America Act, the FISA Amendments Act, etc.). **That**, for instance, **is the precise pattern that's driving his suppression of torture photos**.  Two federal courts ordered the President to release the photos under the 40-year-old Freedom of Information Act.  Not wanting to abide by that decision, the White House (using Lindsey Graham and Joe Lieberman) tried to pressure Congress to enact new legislation vesting the administration with the power to override FOIA.  When House progressives blocked that bill, [the White House assured](http://schotlinepress.wordpress.com/2009/06/17/news-from-u-s-senator-lindsey-graham-r-south-carolina-4/) Lieberman and Graham that Obama would simply use an Executive Order to decree the photos "classified" (when they are plainly nothing of the sort) and thus block their release anyway.  In other words:   We'll go to court and work with Congress so we can pretend that we're not like those bad people in the last administration, but **if we don't get what we want** by doing that, **we'll just do it anyway through unilateral Presidential action,** using the theories that the last administration so helpfully left behind and which we've been [aggressively](http://www.salon.com/opinion/greenwald/2009/04/11/bagram/) [defending](http://www.salon.com/opinion/greenwald/2009/04/06/obama/) [in court](http://www.salon.com/opinion/greenwald/2009/04/09/tpm/). **This was** also **the mentality that shaped Obama's "civil liberties**" speech generally and his "prolonged detention" policy specifically.  [In that speech](http://www.salon.com/news/primary_sources/2009/05/21/gitmo_speech/index2.html), Obama movingly assured us that some of the Guantanamo detainees will be tried in a real court -- i.e., only those the DOJ is certain ahead of time they can convict.  For those about whom there's uncertainty, he's going to create new military commissions to make it easier to obtain convictions, and then try some of the detainees there -- i.e., only those they are certain ahead of time they can convict there.  For the rest -- meaning those about whom Obama can't be certain he'll get the outcome he wants in a judicial proceeding or military commission -- he'll just keep them locked up anyway.  In other words, he'll indulge the charade that people he wants to keep in a cage are entitled to some process (a real court or military commissions) only where he knows in advance he will get what he wants; where he doesn't know that, he'll bypass those pretty processes and assert the unilateral right to keep them imprisoned anyway. A government that will give you a trial before imprisoning you only where it knows ahead of time it will win -- and, where it doesn't know that, will just imprison you without a trial -- isn't a government that believes in due process.  It's one that believes in show trials. And here again, **with this Executive Order proposal, we see this same mentality at play**.  According to the Post article, one motive behind the Executive Order is that "White House officials are increasingly worried that reaching quick agreement with Congress on a new detention system may be impossible."  In other words:  we'll be happy to work with Congress as long as they give us what we want; if they don't, we'll just do it anyway using unilateral presidential powers.   It's certainly possible -- in fact, I'd say it's likely -- that if Congress passes a preventive detention law, it will be even more Draconian than the one Obama wants.  But a President who recognizes Congressional authority only when he likes the outcome -- and ignores it when he doesn't -- isn't a President who actually recognizes Congressional authority at all.

### XOs Kill Prez Power

#### Congressional backlash to executive orders weakens the president

Posner 2K [Michael, Professor Emeritus at the University of Oregon and Adjunct Professor at the Weill Medical College in New York “Blocking the Presidential Power Play” National Journal, Jan 1, <http://www.nationaljournal.com/njmagazine/nj_20000101_15.php>]

Some legal experts counsel Congress to be careful not to usurp legitimate presidential power. One expert urging caution is Douglas Cox, a lawyer who was deputy assistant attorney general in the Office of Legal Counsel at the Justice Department during the Bush Administration. **"When a President overreaches and uses executive orders to** invade or **supersede the legislative powers of Congress, Congress may be sufficiently provoked to consider an across-the-board approach to rein in those abuses**," he told the House Rules subcommittee. "Although that reaction is understandable, Congress must be careful to understand the extent to which executive orders are a necessary adjunct of the President's constitutional duties," Cox added. "At all times, Congress has ample legislative and political means to respond to abusive or lawless executive orders, and thus Congress should resist the temptation to pursue more sweeping, more draconian, and more questionable responses."